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The Semisecret Life of Late Mao-Era International Law Scholarship

By James D. Fry* & Huang Yining**

I. Introduction

The late University of Maryland law professor Hungdah Chiu wrote in 1987 that “no scholarly writings on international law were published in the People’s Republic of China” between 1965 and 1979.¹ This period often is referred to as the Cultural Revolution, which occurred during the latter half of the Mao era when the PRC’s founder Chairman Mao Zedong took back control over the Communist Party of China from the corrupting influences of experts and placed emphasis on the proletariat

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1. Hungdah Chiu, *Chinese Attitudes Towards International Law in the Post-Mao Era, 1978-1987*, 21 INT’L LAW. 1127, 1127 (1987), *reprinted in* 7 CHINESE (TAIWAN) Y.B. INT’L L. & AFF. 399 (1988); *see also* Hungdah Chiu, *Communist China’s Attitude Toward International Law*, 60 AM. J. INT’L L. 245, 266–67 (1966) (stating “[many writers in Communist China] all deny the existence of a common science of international law. . . . The science of international law in Communist China is still in a very primitive stage. Its contribution to this science, if any, is mainly in the field of compiling or editing documents.”) [hereinafter *Communist China’s Attitude*]; Detlev Vagts & Hungdah Chiu, *A Concise Introduction to the New Areas of International Law*, 82 AM. J. INT’L L. 892, 893 (1988) (alluding to the same assertion). By “international law,” this Article means public international law, not private international law or international economic law, even though a broader definition of this phrase obviously would include these other aspects.

masses and on Mao himself. Chiu's assertion seems intuitively correct because it is no mystery that the PRC largely limited its international law-making efforts during this period,² and it seems predictable that PRC international law scholarship would follow this pattern. Nevertheless, Chiu's definitive assertion essentially dares readers to prove him wrong. Where other U.S.-based international law scholars have preferred to follow instinctively,³ this Article began as a direct—although somewhat playful—response to that dare. While an extensive review of Chinese literature and English translations of that literature uncovered only one clearly scholarly piece from that time period, these U.S.-based commentators nevertheless were wrong to overlook it. The reference to “semisecret” in this Article's title is an acknowledgement that contemporary Chinese scholars and institutions are fully aware of this scholarly piece, as its author Zhou Gengsheng is well respected and much discussed in Chinese circles for his unique contributions to international law, in addition to his contribution to the socialist legal system with his emphasis on classism. This Article identifies, analyzes and evaluates this Mao-era literature with an eye towards determining its scholarly significance, mainly for the benefit of a Western audience who lacks knowledge of this particular literature, in the hopes that future English-language studies can pay greater attention to the literature from this period and its impact on the PRC's progress in the realm of international law.⁴ This Article

2. It is almost amusing how Rhode and Whitlock's book about PRC treaties concluded between 1949 and 1978 mentions no treaties between 1965 and 1978. See GRANT F. RHODE & REID E. WHITLOCK, *TREATIES OF THE PEOPLE'S REPUBLIC OF CHINA 1949-1978: AN ANNOTATED COMPILATION* 43 (1980) (listing the last treaty of the PRC from this period as one with Tanzania, which was signed on February 20, 1965).

3. See, e.g., MARK W. JANIS, *AN INTRODUCTION TO INTERNATIONAL LAW* 81 n.144 (4th ed., 2003); Michael Bennett, *The People's Republic of China and the Use of International Law in the Spratly Islands Disputes*, 28 STAN. J. INT'L L. 425, 443 (1992); James V. Feinerman, *Chinese Participation in the International Legal Order*, 141 CHINA Q. 186, 186 (1995); Samuel S. Kim, *The Development of International Law in Post-Mao China*, 1 J. CHINESE L. 117, 117 (1987); Benjamin O. Kostrzewa, *China International Economic Trade Arbitration Commission in 2006: New Rules, Same Results?*, 15 PAC. RIM L. & POL'Y J. 519, 523 (2006).

4. See Tilmann Altwicker & Oliver Diggelmann, *How is Progress Constructed in International Legal Scholarship?*, 25 EUR. J. INT'L L. 425, 443–

also joins with Wuhan University and other PRC institutions in commemorating Zhou Gengsheng's 130th posthumous birthday.

This Article is delimited by a focus on international law *scholarship* during the late Mao era, not on the PRC's actual approach to or pronouncements on international law, mainly in order to respond directly to the assertion of U.S.-based international law scholars on late Mao-era scholarship. Of course, considerable ambiguity surrounds what constitutes scholarly work; no legal or even consensus definition generally exists. To be clear, definitions might exist in specific contexts such as the Foreign Agents Registration Act ("FARA") of the United States, which prohibits foreign lobbying except for "bona-fide religious, *scholastic*, academic or scientific pursuits or the fine arts," *inter alia*, although the distinction between scholarly and other types of activities is left entirely ambiguous under the legislation and the case law.⁵ In this particular context, Chiu signaled in 1966 what he might have meant by scholarly when he added the qualification to similar assertions from the past that Mao-era international law commentators exhibited "a lack of interest in original studies of international law problems,"⁶ suggesting that his definition of scholarly requires an element of originality and intellectual rigor concerning clearly identified problems. Whether the plain-language definition of *scholarly* contains such elements depends on which dictionary one consults. The Oxford English Dictionary refers to "learned, erudite" for its definition.⁷ The Cambridge English Dictionary defines scholarly as "containing a serious, detailed study of a subject,"⁸ which suggests the same type of study that a learned

44 (2014) (noting how past perspectives on international law are important inasmuch as they have helped form current perspectives).

5. Foreign Agents Registration Act, ch. 327, 52 Stat. 631 (1938), *amended* by 22 U.S.C. § 613(e) (emphasis added). *See generally* *Control of Communist Activities*, 1 STAN. L. REV. 85 (1948); Murray L. Schwartz & James C. N. Paul, *Foreign Communist Propaganda in the Mails: A Report on Some Problems of Federal Censorship*, 107 U. PA. L. REV. 621 (1959); *The Swampy Business of Lobbying for Foreign Governments*, ECONOMIST (Sept. 22, 2018), <https://www.economist.com/united-states/2018/09/22/the-swampy-business-of-lobbying-for-foreign-governments>.

6. *Communist China's Attitude*, *supra* note 1, at 267.

7. *Scholarly*, OXFORD ENGLISH DICTIONARY, <http://www.oed.com/view/Entry/172492> (last visited June 4, 2019).

8. *Scholarly*, CAMBRIDGE ENGLISH DICTIONARY, <http://dictionary.cambridge>

or erudite person would undertake. As this Article looks at U.S.-based international law scholars, it might be helpful to look at U.S. dictionaries. The Merriam-Webster dictionary provides a similar definition as that of the Oxford English Dictionary—“of, characteristic of, or suitable to learned persons.”⁹ Collins Dictionary provides a first definition of “learned” and then a second of “having or showing much knowledge, accuracy, and critical ability.”¹⁰ Of course, accuracy might depend on the viewer’s perspective and the referent employed. Regardless, an amalgam of these definitions would include a large measure of detailed knowledge and serious independence in expressing that detailed knowledge, which presumably would create some form of originality in addressing the problem at issue. This Article uses all three elements—knowledge, independence and originality—to assess whether a particular Mao-era work between 1965 and 1979 represents a scholarly contribution. This is distinguished from non-scholarly contributions, which may relate to education but more closely resemble indoctrination and political propaganda.¹¹

Critics will emphasize that independent research was not possible during the Mao era, and so no scholarly work could have been produced. Indeed, the Thought Reform campaigns between 1949 to 1956, the Hundred Flowers Campaign of 1957, the Great Leap Forward between 1958 to 1962, and the Cultural

e.org/dictionary/english/scholarly (last visited June 4, 2019).

9. *Scholarly*, MERRIAM WEBSTER DICTIONARY, www.merriam-webster.com/dictionary/scholarly (last visited June 4, 2019).

10. *Scholarly*, COLLINS DICTIONARY, www.collinsdictionary.com/dictionary/english/scholarly (last visited June 4, 2019).

11. To be clear, Mao emphasized education during the Cultural Revolution. See, e.g., *Mao Tse-Tung: The People’s Emperor*, in MAKERS OF WORLD HISTORY 244, 247-49 (J. Kelley Sowards ed., 2d ed. 1995) (three of the seven directives by Mao related to education, with the second emphasizing the importance of science and engineering at China’s universities, the fourth underlining the key role of workers in embedding proletariat values within China’s education system, and the sixth highlighting the need for youth to be educated by peasants in the countryside). While Mao seems to have opposed the type of critical thinking that forms the bedrock of modern liberal education, he nonetheless saw a type of education—something Western scholars might see as akin to indoctrination—as being central to his overarching vision for the PRC. Regardless, this Article distinguishes such an emphasis on education from genuinely scholarly endeavors that are based on knowledge, independence and originality.

Revolution between 1966 to 1976 all essentially devastated academic and intellectual freedom, to put it mildly.¹² Was it possible to produce scholarly works without a robust legal academy? Was it even possible to be scholarly, in particular, independent, when the threat of re-education camps or worse loomed in the minds of commentators at that time? Despite these valid questions, the research results contained in this Article suggest that at least one Mao-era commentator—Zhou Gengsheng—exhibited sufficient knowledge, independence and originality when describing and analyzing the international legal system, beyond being a mere propaganda tool, to constitute scholarly work. If one can tolerate a lesser degree of originality, the number of scholarly works from this period would increase. The lesser degree of originality comes not in the form of copying, as some commentators assert,¹³ but in the form of commentaries and glossaries accompanying compilations of primary sources of international law, as with Wang Tieya's *Materials on the Law of the Sea*.¹⁴ Despite such potential flexibility with originality, independence must remain intact or else the line between scholarship and propaganda becomes blurred beyond recognition. This stricter requirement for independence means

12. See generally PATRICIA BUCKLEY EBREY, *THE CAMBRIDGE ILLUSTRATED HISTORY OF CHINA* 305–08 (2010); ANDREW G. WALDER, *CHINA UNDER MAO: A REVOLUTION DERAILED* 124, 135–37, 140, 142 180–81, 185–88, 267–68 (2015); Ronald St. John MacDonald, *Wang Tieya: Persevering in Adversity and Shaping the Future of Public International Law in China*, introduction to *ESSAYS IN HONOUR OF WANG TIEYA* 1, 15–21 (Ronald St. John MacDonald ed. 1994) (discussing these events from the perspective of Wang Tieya); Stephen Minas, “Kill Fewer, Kill Carefully”: *An Analysis of the 2006 to 2007 Death Penalty Reforms in China*, 27 *UCLA PAC. BASIN L. J.* 36, 47–48 (2009).

13. See He Qinhu, *China's Transplantation of Soviet International Law after the 1950s* [中国对苏联国际法的移植], 2 *JINLING L. REV.* [金陵法律评论], 89 (2001). The fact that Mao-era scholarship and contemporary Western sources were produced in different languages frustrates efforts to definitively determine the existence of copying using such software as Turnitin. Nevertheless, a comparison of Chinese and U.S. international law scholarship from roughly this time period, especially tables of contents and the structural arrangement of arguments, provides no evidence of copying. Perhaps future tools will be more effective at detecting such types of copying.

14. See Li Yu-min, *An Analysis on the Fundamental Form of the Sino-foreign Treaty Relationship in Late Qing Dynasty* [北京大学法律系国际法教研室], SHI LIN [史林] (2016); Chen Huiqing, *China and the Convention on the Law of the Sea: Historical Review, Experiences and Lessons* [海洋法资料汇编], 3 *WUHAN UNIV. INT'L L. REV.* (2017); PEOPLE'S PUBLISHING HOUSE [人民出版社] (1974) [hereinafter *Wang's Materials on the Law of the Sea*].

that the work of Mao-era officials must be excluded from this study, even when that work may have reflected some elements of originality and serious knowledge of international law, such as Mao's own writings on international law.¹⁵ While U.S.-based international law scholars generally were correct in describing the Mao-era PRC's distrust of international law as an imperialist tool,¹⁶ which also would be an apt description of the Soviet view of international law at this time,¹⁷ this does not mean that no one within the PRC between 1965 and 1979 wrote about international law from a scholarly perspective. This Article analyzes and evaluates that literature to show that at least some PRC international law scholarship was created during the time period in question.

II. Research Methodology

A thorough review of Chinese literature and English translations of that literature reveals a relatively significant body of Mao-era international law scholarship, at least compared to how U.S.-based scholars have described this period in the past. This Part identifies that literature. Before doing so, however, a few words must be said about this Article's methodology. The research for the Article began from broad archival research, including official documents, newspapers, magazine articles and academic publications produced in the PRC from 1965 to 1979, as well as English translations of these

15. See, e.g., ZEDONG MAO, *On Coalition Government*, in SELECTED WORKS OF MAO TSE-TUNG 119–25 (1945) (outlining the CPC's approach to international law); ZEDONG MAO, *On the Outrages by British Warships: Statement by the Spokesman of the General Headquarters of the Chinese People's Liberation Army*, in IV SELECTED WORKS OF MAO TSE-TUNG 1349–51 (Renmin Univ. ed. 1949).

16. See, e.g., Bennett, *supra* note 3, at 442–43; Jacques deLisle, *China's Approach to International Law: A Historical Perspective*, 94 AM. SOC'Y INT'L L. PROC. 267, 272–73 (2000).

17. See generally KAZIMIERZ GRZYBOWSKI, *SOVIET PUBLIC INTERNATIONAL LAW* (1970); G.I. TUNKIN, *THEORY OF INTERNATIONAL LAW* (William E. Butler trans. 1974); Kazimierz Grzybowski, *Soviet Theory of International Law for the Seventies*, 77 AM. J. INT'L L. 862 (1983). Please note that the purpose of this Article is not to compare Soviet and PRC approaches or Western and PRC approaches to international law. The occasional comparisons in this Article between Zhou's book and Western international law textbooks is intended to be illustrative, not exhaustive.

types of materials, with the aim of uncovering absolutely all international law scholarship and references to such scholarship from this period. There were three stages to this archival research. This research began with electronic searches for references to *guojifa* (国际法 or international law) and to *guoji gongfa* (国际公法 or public international law) in two databases: the China Academic Journals Full-text Database (“CAJ”) (中国期刊全文数据库 or Zhongguo Qikan Quanwen Shujuku) from the China Knowledge Resource Integrated Database (“CNKI”) (中国知识基础设施工程, 中国知网, Zhongguo Zhishi Jichu Sheshi Gongcheng or Zhongguo Zhiwang), and The People’s Data (人民数据库 or *Renmin Sujuku*), which returned articles from *Renmin Ribao* (人民日报 or *The People’s Daily*), *Ta-Kung Pao* (大公报 or *The Impartial Daily*) and *Xinhuashe* (新华社 or *The Xinhua News Agency*), among others. These searches returned thousands of articles, seven of which were seen as potentially containing or referring to the type of knowledgeable, independent and original work that one would expect of truly scholarly writings, and all of them were authored by the famous international law scholar Wang Tieya. Given Wang Tieya’s unequivocal expertise in international law,¹⁸ it originally was hoped that these newspaper articles relating to the United Nations and appearing in the *The People’s Daily* and Beijing’s *Impartial Daily* (or *Ta-Kung Pao*) between 1965 and 1967 would be sufficiently scholarly to be included in this study. However, they ultimately did not make it into this Article because of their overwhelmingly propagandistic and ideological tone, which is reflected in their titles:

- *The United Nations is a Tool of Aggression of the US Imperialists*¹⁹;
- *Superstitious Beliefs Concerning the United Nations Must be Discarded*²⁰;

18. See generally MacDonald, *supra* note 12; Wang Tieya, *International Law in China: Historical and Contemporary Perspectives*, 221 REC. DES COURS 195 (1990-II); Dorothee de Sampayo & Garrido-Nijgh, *Judge Wang: Citizen of the World*, 4 J. HIST. INT’L L. 238 (2002).

19. Wang Tieya [王铁崖], *The United Nations is a Tool of Aggression by U.S. Imperialists* [联合国是美帝国主义的侵略工具], IMPARTIAL DAILY [TA-KUNG PAO], Jan. 9, 1965, at 4.

20. Wang Tieya [王铁崖], *Superstitious Beliefs Concerning the United*

- *Look! What a Mess the United Nations has Become*²¹;
- *The United Nations Must Undergo a Thorough Re-organization*²²;
- *The Fundamental Problem of the United Nations is to Break U.S. Control*²³;
- *China Asks for Nothing from the United Nations*²⁴; and
- *An Ugly Drama in the United Nations*.²⁵

A detailed analysis of the content of each confirmed this initial impression. The other results from the searches of these databases similarly lacked the requisite knowledge, independence and originality. Representative pieces of this group would include Hsiang-Yang Chi's article *Smash the New Tsars' Theory of 'Limited Sovereignty'*,²⁶ which was translated into English,²⁶ or Zhu Fu's article *Rusk's 'International Law' Cannot Conceal the Crime of Aggression against Vietnam by American Imperialism*,²⁷ not to mention myriad articles relating to the transfer of the U.N. seat to the PRC and border disputes with the Soviet Union, among many other international disputes. All

Nations Must be Discarded [必须破除对联合国的迷信], IMPARTIAL DAILY [TA-KUNG PAO], Jan. 10, 1965, p. 1 [hereinafter *Superstitious Beliefs*].

21. Wang Tieya [王铁崖], *Look! What a Mess the United Nations has Become* [看, 联合国还象个什么样子], PEOPLE'S DAILY [人民日报], Feb. 25, 1965 [hereinafter *Look!*].

22. Wang Tieya [王铁崖], *The United Nations Must Undergo a Thorough Re-Organization* [联合国必须彻底改组], PEOPLE'S DAILY [人民日报], June 26, 1965, at 5.

23. Wang Tieya [王铁崖], *Fundamental Problem of the United Nations is to Break U.S. Control* [联合国的根本问题是要打破美国的控制], PEOPLE'S DAILY [人民日报], Nov. 19, 1965, at 1 [hereinafter *Fundamental Problem*].

24. Wang Tieya [王铁崖], *China Asks for Nothing from the United Nations* [中国无求于联合国], PEOPLE'S DAILY [人民日报], Dec. 2, 1966, at 4 [hereinafter *China Asks for Nothing*].

25. Wang Tieya [王铁崖], *An Ugly Drama in the United Nations* [联合国的一幕丑剧], PEOPLE'S DAILY [人民日报], July 8, 1967, at 6 [hereinafter *An Ugly Drama*].

26. Chi Hsiang-Yang, *Smash the New Tsars' Theory of "Limited Sovereignty"*, 3 CHINESE L. GOV'T 84 (1969).

27. See Fu Zhu [傅朱], *Rusk's "International Law" Cannot Conceal the Crime of Aggression against Vietnam by American Imperialism* [腊斯克的"国际法"掩盖不了美帝的侵越罪行], 2 CHINESE J. L. [法学研究] 8 (1965).

presumably reflected the PRC's position on the relevant issues, but none reflected a sufficiently high level of knowledge, independence or originality to be included in this study.

The research then shifted to a review of the material contained in the journal *Chinese Law and Government: A Journal of Translation*, which was published by the U.S. publisher International Arts and Sciences Press, starting in 1968, but which contained translations of articles originally written in the PRC in the 1950s and early 1960s, many of which were overwhelmingly authentic in nature.²⁸ This search did not uncover any scholarly work from the time period in question. The research then proceeded to the National Library of China in Beijing, where a review of hardcopy materials available to the public turned out to be the most reliable method of finding relevant materials from this time period.

Again, it was hoped that Wang's three-volume *Selected Materials on Modern European International Relations 1870-1919* would contain sufficient commentary on international law mixed in with his review of European international relations, especially with regard to European treaty law at the time. However, after a thorough review of that three-volume set, this did not prove to be the case. This presumably was the result of Wang Tieya having to set aside his interests in international law when he joined the Peking University's History Department in 1952 following the Mind Reform Movement and the subsequent abolition of the Law and Political Science Departments for being too bourgeois.²⁹ The same is true for Wang Tieya's updated Chinese translation of the eighth edition of Oppenheim's *International Law* that he worked on during the Mao era (but did not come out until 1995), in which he noted in a preface—Wang's sole editorial comment in the book—that “Oppenheim's work is very welcome in China” because it “contains diverse Western viewpoints on international law.”³⁰

28. See, e.g., Chou Keng-Sheng, *New Trends in Contemporary Anglo-American Theory of International Law*, 3 CHINESE L. GOV'T 20 (1970) (published originally in Chinese in 1963; Chou Keng-Sheng is another way to write Zhou Gengsheng).

29. See generally MacDonald, *supra* note 12, at 13–14.

30. See OPPENHEIM'S INTERNATIONAL LAW [奥本海国际法] vi (Wang Tieya trans., 8th ed. 1995); see also de Sampayo & Nijgh, *supra* note 18, at 238 (nothing that Wang worked on the

Another candidate for inclusion in this study was Wang Tieya's 1974 collection entitled *Materials on the Law of the Sea*, which contained the key PRC and UN documents relating to the law of the sea leading up to this period.³¹ The skillful selection of materials helps give the reader a glimpse into the PRC government's position concerning the law of the sea during this period, with a clear emphasis on state sovereignty, as well as its animosity towards colonialism and hegemony.³² However, this Article does not include this collection among the scholarly work from this period because only the minimal glossary of terms at the back of the collection showed genuinely original work by Wang,³³ and it arguably is not sufficient to satisfy this Article's definition of scholarship.

By far the most significant source from this time period is a two-volume textbook from 1976 by Zhou Gengsheng entitled *International Law*.³⁴ Zhou affectionately was called the "Dean" of Chinese international legal scholars and legal scholars in general, and this two-volume textbook appears to represent his life's work.³⁵ According to Chen Tiqiang, Ronald St. John MacDonald (relying extensively on multiple interviews with Wang Tieya) and others, Zhou's *International Law* was finished in 1969, but not published until 1976 due to the political tensions at that time.³⁶ Regardless, both of the 1969 and 1976 dates fit

translation along with T.C. Chen).

31. See generally Wang's *Materials on the Law of the Sea*, *supra* note 14.

32. See generally *id.*

33. See *id.* at 520–21.

34. ZHOU GENSHENG [周鯁生], *INTERNATIONAL LAW [国际法]* (1976) [hereinafter ZHOU].

35. See MacDonald, *supra* note 12, at 5–6 (quoting from an interview with Wang Tieya); see also ZHOU, *supra* note 34, at 7–8 (noting that Zhou was Wang's mentor and friend); Wang Tieya, *Teaching and Research of International Law in Present Day China*, 22 COLUM. J. TRANSNAT'L L. 77, 78 (1983) (describing Wang's relationship with Zhou); Chen Tiqiang, *International Law by Zhou Gengsheng*, in *SELECTED ARTICLES FROM THE CHINESE YEARBOOK OF INTERNATIONAL LAW* 240 (Chinese Soc. Int'l L. ed. 1983) (book review) ("Those in China who studied international law after 1925 were all his students, either in college or under his private tutorship").

36. See MacDonald, *supra* note 12, at 5 (internal citations omitted); Tiqiang, *supra* note 35, at 240; LI MOUSHENG, *THE BRIEF BIOGRAPHY OF PROFESSOR ZHOU GENG SHENG [ZHOU GENG SHENG JIAO SHOU ZHUAN LVE]*; see also Leo Gross & Vratislav Pechota, *Selected Articles from Chinese Yearbook of International Law*, 79 AM. J. INT'L L. 851, 853–54 (1985) (book review).

within the 1965 to 1979 period in question.³⁷ Hungdah Chiu asserts that Zhou's book was completed in 1964,³⁸ presumably because the publisher of the 1976 version Commercial Press inserted a preface stating Zhou did not work on the manuscript after 1964 due to illness, which the publisher of the 2007 version Wuhan University Press repeated in an abbreviated form.³⁹ This 1964 completion date enables Hungdah Chiu to maintain his claim that there was no international law scholarship in the PRC between 1965 and 1979, notwithstanding the 1976 publication date. However, four factors undermine the reliability of the 1964 completion date in the preface. First, it is not difficult to imagine how Commercial Press had political reasons for giving (and Wuhan University Press repeating) an incorrect completion date, as this sort of work was not supposed to have been produced during the Cultural Revolution. Additionally, these publishers were seen as tools of the Communist Party of China. At the same time, Chen Tiqiang and Wang Tieya had no conceivable reason for giving an incorrect date. Interestingly, the preface to the 1976 version of Zhou's *International Law* provides a disclaimer that Zhou's focus was on Western bourgeois international law, his ideas reflected an influence from Western and Soviet sources that was wrong (even though he extensively criticized these works), and the reader should be cautious and use a Marxist-Leninist and Maoist way of interpreting the book.⁴⁰ This detailed disclaimer does not appear in the 1981 or 2007 versions, although the 2007 version repeats the assertion that the book was completed in 1964 due to Zhou's illness. Second, the preface in the 1976 version states that the book was only internally released for use by diplomats

37. See MacDonald, *supra* note 12, at 5.

38. See Leo Gross & Hungdah Chiu, Guoji Fa (*International Law*), 77 AM. J. INT'L L. 977, 977 (1983) (book review) [hereinafter *Chiu Book Review*]; see also Wolfgang Kess, *International Law*, 16 VERFASSUNG UND RECHT ÜBERSEE 204 (1983); Kim, *supra* note 3, at 127; Zhang Wenbing, *International Law: Western Traditions and Chinese Characteristics—Re-reading Zhou Gengsheng's International Law* [国际法：西方传统与中国特色—重读周鲠生《国际法》随想], 7 J. COMP. L. [比较法学研究] 187 (1993).

39. See ZHOU, *supra* note 34, at i; ZHOU GENSHENG [周鲠生], 1 INTERNATIONAL LAW [国际法], at preface p. x, (Wuhan University Press [武汉大学出版社] 2007). Interestingly, Commercial Press did not include this preface in its 1981 version of that book.

40. See ZHOU, *supra* note 34, at i.

and academics.⁴¹ However, a search of the Online Computer Library Center's WorldCat union catalog shows that twenty-six of the 72,000 libraries on that database have the 1976 version (including libraries in Hong Kong and Taiwan), whereas only four libraries have the 1981 version (including libraries in the United Kingdom and the United States). This suggests a broader circulation than just internally, given that it is somewhat difficult to see Hong Kong or Taiwan as being "internal" in the 1960s, notwithstanding the PRC's claims to these territories. This apparent misstatement brings up the possibility that the assertion of a 1964 completion date also was incorrect. Third, Zhou apparently wrote *International Law* in his later years while he was sick,⁴² which would mean that his becoming sick did not determine when he stopped working on the book, as Commercial Press and Wuhan University Press claimed. Fourth, Chen Tiqiang and Wang Tieya were contemporaries and colleagues of Zhou,⁴³ and so they presumably would have had more reliable, firsthand knowledge of when Zhou completed the 1976 book than the publishers.

Critics will point to content within Zhou's book that suggests that it was completed before the Cultural Revolution. For example, as explained in Part III(6)(e) below, Zhou wrote that no international convention regulating outer space existed at that time.⁴⁴ However, it is common knowledge that the first outer space treaty—the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies—was concluded in 1967, thereby suggesting that Zhou had completed the book before 1967. This point assumes that Zhou was perfectly up-to-date on all areas of international law at the time of writing the book (which might not have been the case), it assumes that all parts of the book were completed at the same time, and it

41. See *id.*

42. See He Qinhua, *Travelling Around Europe and Asia: The Father of International Law in China* [游学欧亚的周鲠生：中国近代国际法之父], Jan. 5, 2010; HAN YANGUANG, *ENCYCLOPEDIA SINITICA: VOLUME OF LAW* [中国大百科全书：法学篇] 810 (1984); Tiqiang, *supra* note 35, at 241.

43. See MacDonald, *supra* note 12, at 5; Tieya, *supra* note 35, at 78 (describing Wang's relationship with Zhou).

44. See ZHOU, *supra* note 34, at 413.

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assumes that the period between 1965 and 1967 is not relevant to this study, which it is.

Regardless, none of these factors change the undisputed fact that the book came out in 1976, which is the usual way to ascribe a date to a publication, not the date of manuscript completion,⁴⁵ and which is well within the 1965 to 1979 timeframe in question. Of course, with the knowledge that books and articles with a publication date during the post-Mao era could have been produced during the part of the Mao era in question, there could be many more pertinent publications to include in this Article. However, there is no easy way to tell when manuscripts were produced, which constitutes a real barrier in providing a complete census of late-Mao-era international law scholarship. Notwithstanding this disclaimer, your authors feel relatively confident that this Article has dealt with all of the main late-Mao-era international law scholarship that currently is publicly available.

At least three English-language book reviews have been written on Zhou's book by U.S.-based or U.S.-trained international law scholars,⁴⁶ and at least four additional sources have cited the 1976 version of Zhou's book.⁴⁷ Therefore, it is clear that Zhou's book is well known, or should be well known, among international law scholars, making it that much more surprising that commentators continue to maintain that no international law scholarship was produced between 1965 and 1979. At the same time, as most of these reviews were on the brief side—including a one-paragraph review and a one-page review—this Article adds value by providing the most detailed review to date.

As the following parts show, the knowledge, independence and originality contained in Zhou Gengsheng's *International Law* arguably are sufficient to categorize it as scholarly, thereby

45. See BOOK INDUSTRY STUDY GROUP, BEST PRACTICES FOR PRODUCT METADATA 169–70 (2015).

46. See Tiqiang, *supra* note 35, at 240; Chiu *Book Review*, *supra* note 38, at 977; Kess, *supra* note 38, at 204.

47. See, e.g., Kim, *supra* note 3, at 121, 127; Pasha L. Hsieh, *The Discipline of International Law in Republican China and Contemporary Taiwan*, 14 WASH. U. GLOBAL STUD. L. REV. 87, 119–20 (2015); Wei Wang, *Historical Evolution of National Treatment in China*, 39 INT'L LAW. 759, 760–61 (2005); Gross & Pechota, *supra* note 36, at 853–54.

refuting the notion that no international law scholarship was produced in the People's Republic of China between 1965 and 1979. The fact that no PRC international law scholars make a similar assertion as Chiu, and some even mock this assertion,⁴⁸ should have signaled to U.S.-based international law scholars (especially those with Chinese proficiency or those with sufficient resources to hire assistants with Chinese proficiency) that greater scrutiny was warranted. The following part analyzes and evaluates Zhou's *International Law* in detail.

III. Zhou Gengsheng's *International Law*

Zhou Gengsheng's 1976 book *International Law*, which essentially took the format of a treatise, covered many of the main topics the market has come to expect of international law textbooks. These topics include the concept and origin of international law, the relationship between domestic and international law, international legal personality and statehood, state responsibility, state jurisdiction, residents, territory, diplomatic relations, treaty law, international organizations, international dispute settlement, and the International Court of Justice.⁴⁹ The fact that 1981 and 2007 versions of this treatise were created, the UN Office for Outer Space Affairs uses the 2007 version,⁵⁰ and it still is in circulation attests to the overall quality of *International Law*. Obvious gaps in coverage include international human rights law, international criminal law, international humanitarian law and a few others, although that might be expected of such a treatise from this period, when many Western and socialist scholars alike saw little use of war-time laws following the atrocities of the Second World War.⁵¹ Chen Tiqiang asserts that Zhou did not intentionally leave out war-

48. See YU MINYOU & LIU HENG, THE DIRECTION OF DEVELOPMENT OF INTERNATIONAL LAW IN CHINA [论国际法在中国的发展走向] 5 (2010); WUHAN UNIVERSITY JOURNAL OF PHILOSOPHY & SOCIAL SCIENCE [武汉大学学报:哲学社会科学版] 705-22 (2010).

49. See ZHOU, *supra* note 34; *About Us*, COMMERCIAL PRESS, www.commercialpress.com.hk/ww/aboutus.html (last visited June 10, 2019).

50. See United Nations Office of Outer Space Affairs, *References and Resources*, www.unoosa.org/pdf/publications/st_space_064resrefE.pdf (last visited June 10, 2019).

51. See Tiqiang, *supra* note 35, at 241.

time laws from this book, but rather he died before these parts could be completed,⁵² which seems questionable. Nevertheless, each chapter started with a recitation of the general principles, which showed mastery of each topic, thus satisfying the knowledge requirement of scholarship, and then provided a strong evaluation of those principles from the PRC or socialist perspective, including relevant examples, which showed clear mastery of the PRC's policies at that time.

Hungdah Chiu and Samuel Kim would appear to downplay the significance of this book by asserting that Zhou relied too heavily on the eighth edition of Oppenheim's *International Law*, both in structure and in substance.⁵³ With the structure, there admittedly are considerable similarities in the chapter titles alone, even though the eighth edition of Volume 1 relating to peace has sixteen chapters, and Zhou's book has twelve.⁵⁴ However, such similarities are too superficial a basis for downplaying the significance of Zhou's book. After all, most textbooks from this period shared similarities in their tables of contents,⁵⁵ presumably for the obvious reason that international

52. *See id.* at 241–42.

53. *See Chiu Book Review*, *supra* note 38, at 978 (“The organization of the book is primarily based on Oppenheim’s treatise on international law Reliance on Oppenheim poses some problems, because by the time the author completed the manuscript, Lauterpacht’s Oppenheim was 9 years old and did not totally reflect some important subsequent developments in international law.”); Kim, *supra* note 3, at 142; *see also* Tiqiang, *supra* note 35, at 242.

54. Zhou’s book does not address any of the topics found in Volume 2 of Oppenheim’s *International Law*, which relates to war. *See* Tiqiang, *supra* note 35, at 241–42.

55. *See generally* IAN BROWNLIE, *PRINCIPLES OF PUBLIC INTERNATIONAL LAW* vii–xix (3d ed. 1979); D.J. LATHAM BROWN, *PUBLIC INTERNATIONAL LAW* vii–ix (1970); D.P. O’CONNELL, *INTERNATIONAL LAW* v–xxiii (1970); J.G. STARKE, *AN INTRODUCTION TO INTERNATIONAL LAW* xi–xiv (8th ed. 1977) (although including the law relating to war and neutrality); *see also* WOLFGANG G. FRIEDMANN ET AL., *CASES AND MATERIALS ON INTERNATIONAL LAW* xv–xvi (Jesse H. Choper et al. 1969) (adding use of force); L.C. GREEN, *INTERNATIONAL LAW THROUGH THE CASES* vii–xiii (4th ed. 1978) (adding international criminal law, international torts and the law of armed conflict, among others); D.J. HARRIS, *CASES AND MATERIALS ON INTERNATIONAL LAW* vii–ix (1979) (adding use of force); *MANUAL OF PUBLIC INTERNATIONAL LAW* v–vi (Max Sørensen ed., 1968) (same); WERNER LEVI, *CONTEMPORARY INTERNATIONAL LAW: A CONCISE INTRODUCTION* vii (1979) (same); GEORG SCHWARZENBERGER & E.D. BROWN, *A MANUAL OF INTERNATIONAL LAW* viii–xv (6th ed. 1976) (adding the law of armed conflict and a nuclear-age context); RICHARD N. SWIFT, *INTERNATIONAL LAW: CURRENT AND CLASSIC* ix–xi (1969) (adding use of force). For a good example of how non-Western textbooks

law involves a relatively standard set of topics relating to the rules involving the interaction of subjects of international law. As Chen Tiqiang pointed out about Zhou's book, it "was written more or less following the conventional system in the arrangement of its chapters . . .,"⁵⁶ and this appears to be an overwhelmingly accurate assessment.

When it comes to the substance, while Oppenheim's *International Law* influenced Zhou, these are two entirely different books. For example, Oppenheim's book and Zhou's book adopt completely different fundamental ideologies, as well as different views on many aspects of international law. These differences are highlighted throughout this Article, although such comparisons are illustrative, not exhaustive. As the Chinese People's Institute of Foreign Affairs ("CPIFA") notes in the preface of its 1954 translation of the seventh edition of Oppenheim's *International Law*, the book reflects the imperialist and capitalist approach to international law,⁵⁷ whereas Zhou's book largely, but not always, was in line with the PRC's policies at that time, as explained throughout this part. Even if Zhou's book was perfectly in line with PRC policies at that time or only cited publicly accessible government sources, it is not a valid basis for downplaying the significance of the book, as Hungdah Chiu did,⁵⁸ because many Western international law textbooks and treatises at the time were in line with their home government's policies and cited publicly accessible government sources, including Oppenheim's *International Law*.⁵⁹ Moreover, the perspective in Oppenheim's *International Law* and Zhou's book differ dramatically on a host

at this time were broader than the normal Western textbook on international law, see R.C. HINGORANI, MODERN INTERNATIONAL LAW xi–xii (1979) (adding chapters on airspace, terrorism, espionage and war-related chapters, among many others); see also Tiqiang, *supra* note 35, at 241 ("The book was written more or less following the conventional system in the arrangements of its chapters . . .").

56. Tiqiang, *supra* note 35, at 241.

57. See OPPENHEIM'S INTERNATIONAL LAW [奥本海国际法] i–ii (Chinese People's Institute of Foreign Affairs trans., 7th ed. 1954) [hereinafter *Oppenheim's International Law in Chinese*].

58. See Chiu Book Review, *supra* note 38, at 978.

59. See, e.g., LASSA OPPENHEIM, 1 INTERNATIONAL LAW: A TREATISE 200, 204, 281, 336, 651–52, 663, 675, 690–91, 698, 700 (Hersch Lauterpacht, ed., 8th ed. 1955).

of specific points, as shown throughout this Article. For example, CPIFA interpreted the seventh edition of Oppenheim's *International Law* as viewing Tibet as a quasi-sovereign state and that it was just for states to intervene in other states' affairs to protect their overseas nationals, just as the United States intervened in Cuba in 1906 and the United Kingdom intervened in China in 1927, which CPIFA and the PRC rejected.⁶⁰ These types of ideological and specific differences make it hard to see any meaningful similarities between these books beyond the relatively superficial ordering of a few of the chapters and Zhou's engagement with Oppenheim's assertions. Finally, it must be noted that it was not uncommon for Western international law textbooks at that time to be influenced heavily by Oppenheim's *International Law*,⁶¹ presumably because it was the best, most comprehensive textbook on the market at that time. Such influence has not stopped those works from being considered as scholarly, so why should it with Zhou's book?

Zhou's consistency with PRC policies and criticism of U.S. and other imperialist policies concerning international law would be expected of a product from this time period. In particular, Zhou emphasized the PRC's position as the rightful heir to China (as opposed to the Republic of China, or Taiwan), the peaceful nature of socialist states that opposes imperialism and supports liberation of previously colonized states everywhere (especially in Asia and Africa), and the importance of the peaceful resolution of disputes through negotiation (not through force), as explained below. As shown throughout this Article, these points are in line with PRC policies at that time.⁶²

60. See Oppenheim's *International Law in Chinese*, *supra* note 57, at 208, 239, 244.

61. See, e.g., BROWNLIE, *supra* note 55 (citing OPPENHEIM, *supra* note 59); SCHWARZENBERGER & BROWN, *supra* note 55, at 163, 336, 411, 463, 475, 539 (6th ed. 1976); Benedict Kingsbury, *Legal Positivism as Normative Politics: International Society, Balance of Power and Lassa Oppenheim's Positive International Law*, 13 EUR. J. INT'L L. 401 (2002) (discussing the overwhelming influence of Oppenheim on international lawyers since the beginning of the 20th century); Martin V. Totaro, *Legal Positivism, Constructivism, and International Human Rights Law: The Case of Participatory Development*, 48 VA. J. INT'L L. 719, 726–27 (2008) (same).

62. See Deng Xiaoping, *The Speech of Deng Xiaoping (Vice Prime Minister) in the 6th special meeting of General Assembly of the United Nation at 1974* [邓小平1974年联合国代表大会发言], PEOPLE [人],

Given this similarity with the PRC's position, it may at first seem surprising that Commercial Press felt obliged to add the preface to the 1976 version that warned readers of the Western influence that Zhou's book exhibited. However, upon closer inspection, it becomes easy to see what the PRC government and Commercial Press would have been worried about concerning Zhou's treatise—for example, Zhou's characterization as custom the practice of pre-maturely recognizing states in Chapter Three. Therefore, while critics might challenge the characterization of Zhou's treatise as scholarly based on an apparent lack of independence due to toeing the party line in many instances, so to speak, these sorts of divergences from PRC policy strengthen the perceived independence of this work.

Chinese international law scholars have recognized the scholarly contribution of Zhou's book. For example, Chen Tiqiang succinctly summarized this work in the following manner:

International Law, the most voluminous and erudite work of [Zhou's], was completed by Prof. Zhou at the age of 80 when his health was failing, and especially when his eye-sight was weakening. With an astonishing will power, Prof. Zhou wrote this 600,000-character book which is rich in information and extensive documentation. It has a powerful logic, well-knit structure and great succinctness. His immense knowledge and great seriousness in academic pursuit are worth emulation by all of us.⁶³

www.people.com.cn/GB/shizheng/252/6688/6715/20011023/588430.html (last visited June 10, 2019); *see also*

The Declaration of People's Republic of China in the World Conference to Defend Peace [中国保卫世界和平大会宣言], PEOPLE'S DAILY [人民日报], Oct. 4, 1949; Jing Lu, *The Style of Peace Diplomacy of People's Republic of China* [中国和平外交的风格与气派], CPC NEWS [中国共产党新闻网], Aug. 2, 2017, <http://theory.people.com.cn/n1/2017/0802/c40531-29443820.html> (last visited at June 10, 2019); *The Geneva Conference is Inaugurated!* [日内瓦会议开幕了], PEOPLE'S DAILY [人民日报], Apr. 29, 1954.

63. Tiqiang, *supra* note 35, at 241.

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Here, Chen Tiqiang seems to be making the case for why Zhou's work was scholarly, essentially a similar definition as the one this Article adopts, as outlined in the introductory part above, and this Article would agree with Chen's assessment. Combining the knowledge, independence and originality that is apparent throughout, especially his apt selection of examples to support his assertions, this book constitutes the clearest example of scholarly work during the period between 1965 and 1979.

1. Introductory Chapter

Starting with his introduction to international law, Zhou provided an interesting comparison of Western and socialist approaches to international law, quoting from such sources as Oppenheim as well as the accepted Soviet definition, criticizing the former for its formalism and praising the latter for promoting peace through collective security.⁶⁴ This point was in line with PRC policies at that time.⁶⁵ Zhou then identified four features of international law: (1) internationality, which emphasized formation through consent between states and excluded individuals as subjects; (2) legality, which excluded non-legal norms like comity from its scope and recognized difficulties in enforceability; (3) generality, which required the binding of all states to a particular norm; and (4) classism, which required law to serve politics.⁶⁶ This last point was particularly in line with PRC policies at that time.⁶⁷ Zhou took issue with the notion that international law was a European creation because states during the times of ancient China adopted rules and customs, although he showed a large measure of objectivity and independence by admitting that international law generally was a product of Europe in that international law did not gain

64. See ZHOU, *supra* note 34, at 1–3.

65. See MINYOU & HENG, *supra* note 48; WUHAN UNIVERSITY JOURNAL OF PHILOSOPHY & SOCIAL SCIENCE, *supra* note 48, at 705–22.

66. See ZHOU, *supra* note 34, at 3–8.

67. See Jianming Du, *Re-understand the Class Nature of Law* [重新认识法的阶级性], 2010 J. JILIN NORMAL UNIV. [吉林师范大学学报:人文社会科学版] 72–74 (2010); Yaohai Wang, *The Ten Principles of Marxist Jurisprudence* [马克思主义法学的十大原理], 1 SOC. SCI. HEILONGJIANG [黑龙江社会科学], 103–10 (2016).

influence over international relations until after the 1684 Peace of Westphalia.⁶⁸ International law became less of a European phenomenon as more colonies in North and South America gained independence in the 19th century and Western values spread to Eastern states.⁶⁹ This Western influence ultimately led to Asian states—namely, China, Japan, Thailand and Korea—being forced to conclude unequal treaties with Western states and Africa being carved up by colonial powers in search of *terra nullius*, thereby subjecting these regions to imperialist forms of international law.⁷⁰ Zhou heralded the 1917 Communist Revolution as introducing a new form of international law that promoted peace by prohibiting territorial seizure by force, *inter alia*.⁷¹ According to Zhou, collaboration between socialist and capitalist states enabled the conclusion of the UN Charter, which instrument embodied socialist norms such as respecting people's equal rights, the principle of self-determination, and the non-intervention principle that emphasizes state sovereignty.⁷² These two points are in line with PRC policies at that time.⁷³ The first point about the prohibition of territorial seizure by force is interesting, as one would have expected Zhou to point to the end of class struggle or the elevation of the proletariat or peasant leading to peace.⁷⁴ Zhou seems to have seen such an assertion as impossible because class struggle within international law continued during the UN era, with the socialist approach promoting the people's interests and the capitalist approach promoting capitalists' interests.⁷⁵ Other Chinese commentators during this time shared this same view of the biases of international law.⁷⁶

68. See ZHOU, *supra* note 34, at 39–42.

69. See *id.* at 43–51.

70. See *id.* at 50–51.

71. See *id.* at 51–53.

72. See *id.* at 53–54.

73. See *Resist Aggression, Peaceful Coexistence* [反抗侵略, 和平共处], PEOPLE'S DAILY [人民日报], Apr. 4, 1955; Xiaoping, *supra* note 62.

74. See 2 *Sources of Chinese Tradition* 346–47, 407–09 (William Theodore de Bary & Irene Bloom eds., 2d ed. 2001).

75. See ZHOU, *supra* note 34, at 55.

76. See Xixiang Song, *About the Class Nature of International Law* [关于国际法的阶级性], 1986 Shanghai Univ. J. [上海大学学报: 社会科学版] 103–05 (1986); Naibin Xu, *Discussing the Definition of International Law* [谈谈国际法的定义], 1984 NW. UNIV. POLI. L.J. [西北政法学院学报] 79 (1984).

All of these commentators essentially downplayed the strides that labor and economic development had made on the international level since the end of the First World War and their impact on (or rather perceived impact on) peace.⁷⁷ Concerning the point about collaboration between capitalist and socialist states leading to the conclusion of the UN Charter, this is noticeably different from the standard Western explanation of how the UN Charter was concluded, which portrays the Soviet representatives as disagreeable and the Chinese representatives as not being particularly socialist.⁷⁸

Again, critics might point to such descriptions of international law by Zhou as reflecting a lack of independence, given their strong socialist tint. However, such descriptions demonstrate a somewhat sophisticated understanding of the autopoietic nature of international law that allows for different interpretations of international law, which was present in the Western literature at this time.⁷⁹ This stands in stark contrast to Chiu's approach to international law, for example, which seemed to see valid approaches to international law as requiring confirmation from "the writings of Western international law scholars,"⁸⁰ which is reflected neither in the mainstream literature on international law nor in actual practice.

2. Main Participants of International Law

In Chapter Two on the main participants of *International Law*, Zhou stressed the focus on states and downplayed the role of international organizations and individuals to being targets of enforcement of international law because their rights derive from treaties between states.⁸¹ Zhou saw any effort to elevate international organizations to the status of subjects of

77. See generally DANIEL G. PARTAN, *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL LABOR ORGANIZATION* (1965); WIL D. VERWEY, *ECONOMIC DEVELOPMENT, PEACE AND INTERNATIONAL LAW* (1972).

78. See, e.g., STEPHEN C. SCHLESINGER, *ACT OF CREATION: THE FOUNDING OF THE UNITED NATIONS* ch. 7 (2003).

79. See D.W. GREIG, *INTERNATIONAL LAW* 52–53 (2d ed. 1976).

80. Hungdah Chiu, *Comparison of the Nationalist and Communist Chinese Views of Unequal Treaties*, in *CHINA'S PRACTICE OF INTERNATIONAL LAW: SOME CASE STUDIES* 239, 267 (Jerome A. Cohen ed., 1972).

81. See ZHOU, *supra* note 34, at 61–64.

international law as an effort by capitalist states who control those international organizations to increase their power.⁸² Moreover, Zhou opposed partial enjoyment of sovereignty by other non-state entities on account of the belief that they struggle under colonialism.⁸³ This point was in line with PRC policy at that time.⁸⁴ Zhou emphasized that Tibet is an autonomous region in the PRC, not a sovereign state, a half-sovereign state or colony.⁸⁵ Zhou also spent some time discussing the status of the Vatican in concluding that it is not a state and not a participant in international law,⁸⁶ which presumably was to justify the PRC's lack of diplomatic relations with the Vatican.

a. Concept of a State

Concerning the concept of a state under international law, Zhou asserted that any attempt to suggest there are “two Chinas” undermines Chinese sovereignty, which is against international law.⁸⁷ This point was in line with PRC policies at that time.⁸⁸ He asserted that a local government of a country cannot constitute a state, and so any local government, unless otherwise authorized by the state, cannot engage in foreign relations.⁸⁹ For example, when Tibet sent its so-called diplomats overseas in 1950, the Chinese government immediately denied that it had sent any diplomats.⁹⁰ Zhou identified a significant exception—that a nation that is fighting for independence, building its own country, and developing its own political organizations, even if overseas, can be treated as a sovereign

82. See *id.* at 67–70.

83. See *id.* at 75–77.

84. *Ministry of Foreign Affairs Intensely Remonstrates that India Intervened the Domestic Issues of People's Republic of China* [我外交部强烈抗议印度干涉中国内政], PEOPLE'S DAILY [人民日报], Jan. 3, 1966 [hereinafter *Ministry of Foreign Affairs*]; *China Asks for Nothing*, *supra* note 24.

85. See ZHOU, *supra* note 34, at 76–77.

86. See *id.* at 101–03.

87. See *id.* at 60.

88. See *China Asks for Nothing*, *supra* note 24.

89. See ZHOU, *supra* note 34, at 60.

90. See *id.* at 60–61.

state.⁹¹ This appears to have been roughly in line with Western approaches to international law at that time, which saw a blurred line between states and entities struggling for such status.⁹² While Oppenheim's *International Law* generally agrees with the general Western approach, it nevertheless emphasizes the objective nature of state recognition and requires a distinction to be made between insurgents that constitute a belligerent power and insurgents that constitute a state.⁹³ This would seem to go against how Zhou portrayed international law on this point because he did not mention liberation from colonialism. It has been particularly difficult to find evidence showing whether Zhou's assertion was in line with PRC policies at that time. On the one hand, if this assertion was referring to the case of Taiwan, the PRC obviously could not support the position that Taiwan could be treated as a sovereign state even though Chiang Kai-shek had developed Taiwan's own political organizations. On the other hand, PRC leaders at that time generally had expressed support for ex-colonial states in their fight for independence. No readily available evidence for this latter point could be found. Therefore, it must be concluded that Zhou's assertion here falls within a gray area of PRC policy.

The main point that Zhou made with participation in international law is that an individual cannot be directly involved in international law.⁹⁴ States, instead of individuals, are the main participants of international law.⁹⁵ Therefore, international law regulates acts of states, not acts of individuals.⁹⁶ Zhou pointed out that all the rights an individual is entitled to under international law are not international

91. See *id.* at 61.

92. See, e.g., BROWNLIE, *supra* note 55, at 80–82; STARKE, *supra* note 55, at 149–57 (focusing on the political elements of state recognition); see also JAMES R. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 257–63 (1979) (placing the emphasis on whether the struggling entity can be seen as a self-determination unit).

93. See OPPENHEIM, *supra* note 59, at 127–29; see also HARRIS, *supra* note 55, at 671–72 (recognizing an exception on the prohibition of intervention where insurgents are fighting for national liberation in the decolonization context); STARKE, *supra* note 55, at 174–77 (but focusing on this in the context of recognizing a belligerent as a government, not as a state).

94. See ZHOU, *supra* note 34, at 62.

95. See *id.*

96. See *id.*

rights *per se*.⁹⁷ Instead, they are the rights conferred by national laws as a result of an implementation of international law.⁹⁸ Zhou identified several examples that Western jurists provide to show that individuals have a role in international law: (1) sanctioning individuals for war crimes and piracy; (2) protection of individual rights, such as protecting minorities; and (3) individuals can bring claims against a state in an arbitral tribunal under Section 297 of the Versailles Treaty.⁹⁹ Zhou asserted that these, in fact, still are a state's international rights and duties because they are created by inter-state treaties.¹⁰⁰ Individuals simply are the targets of implementation. With regard to sanctioning, war criminals and pirates simply are the targets of punishment; they are sanctioned according to inter-state treaties.¹⁰¹ As for individuals bringing claims against states, compensation is made to the state that the individual belongs to, rather than to the individual directly, and so the dispute actually is between the states, not the individual and a state.¹⁰²

Zhou emphasized that international organizations are not included among the main participants of international law.¹⁰³ For example, while the United Nations has the function of peacekeeping and other important international duties, this does not mean that it is a main participant in international law.¹⁰⁴ This is because the United Nations is made up of member states, and the organization itself lacks sovereignty.¹⁰⁵ Zhou dismissed arguments that international organizations are main participants as attempts to amplify the powers of the United Nations in order to undermine state sovereignty, which is convenient for imperialists' expansion plans.¹⁰⁶

97. *See id.*

98. *See id.*

99. *See id.* at 67.

100. *See* ZHOU, *supra* note 34, at 67.

101. *See id.* at 68.

102. *See id.* at 69.

103. *See id.*

104. *See* ZHOU, *supra* note 34, at 69.

105. *See id.* at 70.

106. *See id.*

b. Concept of Sovereignty

When it comes to sovereignty, Zhou explained that it cannot be divided into internal and external sovereignty, as some Western scholars are inclined to do in promoting imperialism and colonialism.¹⁰⁷ In particular, a vassal state essentially is created when its internal sovereignty is acknowledged, but its external sovereignty is denied.¹⁰⁸

Zhou asserted that all states have both types of sovereignty, which are two concepts that cannot be divided.¹⁰⁹ Even for half-sovereign states, their sovereignty still exists, and unless they fundamentally cease to exist, they have the right to get rid of the external control and regain full sovereignty at any time.¹¹⁰ In a unitary state, there is only one centralized authority that represents the entire country.¹¹¹ Even in a remote area in a unitary state, there can be an autonomous region under the state's law, but such a region cannot be seen as a state under international law.¹¹² These two points were in line with PRC policies at that time.¹¹³ The first point seems more like a tautology than an assertion of international law. The second point appears to be in line with Western approaches to international law at that time, inasmuch as federal states and confederations were seen as a certain type of state under international law.¹¹⁴ Zhou took issue with Oppenheim's *International Law* listing of Tibet as one of the "half-sovereign states,"¹¹⁵ which Zhou claimed was evidence of a British imperialist deliberately trying to complicate the facts.¹¹⁶ However, Oppenheim's *International Law* appears to be an exception among the international law textbooks from this period concerning this point.

107. See *id.* at 74–75.

108. See *id.* at 75.

109. See *id.* at 75–76.

110. See ZHOU, *supra* note 34, at 75–76.

111. See *id.* at 76.

112. See *id.*

113. See *Ministry of Foreign Affairs*, *supra* note 84; *China Asks for Nothing*, *supra* note 24.

114. See, e.g., STARKE, *supra* note 55, at 129–30.

115. OPPENHEIM, *supra* note 59, at 257–58.

116. See ZHOU, *supra* note 34, at 76–77.

Zhou spent a considerable amount of space arguing that the Vatican is not a state, and so it is not a participant in international law.¹¹⁷ Even though the Pope possessed territory, he lost this territory by 1870 when the Vatican was integrated with Italy.¹¹⁸ Therefore, the Pope is no longer a head of state.¹¹⁹ Although Italy has passed the Law of Papal Guarantees to preserve the Pope's status, this is in fact national law.¹²⁰ However, the situation changed after the Lateran Treaty in 1929, which to a certain extent reinstated the Vatican's status as a state.¹²¹ However, it should be noted that the Lateran Treaty stipulated that the Vatican is only responsible for religious affairs and would not take part in international affairs.¹²² Furthermore, the Vatican does not have sufficient territory and people to gain statehood, and so it is not a participant of international law.¹²³

3. State Recognition

With regard to state recognition in Chapter Three, Zhou accentuated the need for colonies to gain independence before they can be recognized as states, contrary to how the United States and Japan had prematurely recognized states following expansion by force.¹²⁴ Zhou noted how the PRC was the rightful heir to China, both within the United Nations and elsewhere internationally, and so the PRC should not have to apply for UN membership or otherwise sue for ownership of Chinese properties and assets.¹²⁵ This Chapter, along with Chapter Four, essentially depicted how the PRC viewed its international status and how the PRC conducted its diplomatic affairs. First, Zhou pointed out that the PRC only recognized those states that gained independence from colonial liberation and would never

117. *See id.* at 101–03.

118. *See id.*

119. *See id.*

120. *See id.*

121. *See id.*

122. *See ZHOU, supra* note 34.

123. *See id.*

124. *See id.* at 109–12.

125. *See id.* at 158–60.

recognize a state prematurely, thereby criticizing the United States and Japan for prematurely or inappropriately refusing to recognize the Soviet Union and the PRC for political reason and recognizing Manchuria, respectively. This point appears to have been in line with PRC policies at that time.¹²⁶

With regard to the unfair treaties previously entered into between China, the Qing government, the Republic of China and other foreign entities, Zhou explained how the PRC adopted a piecemeal approach towards each treaty. However, Zhou asserted that the validity of all those treaties would be subject to the PRC's acknowledgement of those treaties as being valid.

As for succession, the PRC deemed itself the rightful heir to China, both within the United Nations and internationally. Especially with regard to the PRC's position within the United Nations, Zhou argued that this is an issue of reinstating the PRC's position as the representative of China rather than reviewing whether to allow the PRC to join as a new member state. This argument, of course, enabled the PRC to benefit from the unique status of the Republic of China in the United Nations previously, especially as one of the founding members and one of the five permanent members of the Security Council. Zhou further condemned the United States for disrupting the PRC's return to the United Nations. Zhou revisited these sorts of issues in Chapter Ten.

a. Comparisons of State Recognition

Zhou started out his discussion of state recognition by challenging the customary international law of "pre-maturely recognizing a new country that may offend the integrity of the sovereign state and is illegal interference."¹²⁷ Zhou gave an example of when the United States recognized Panama's independence in 1903.¹²⁸ There also are existing territories that are occupied by foreign forces where a puppet state has been created.¹²⁹ Those puppet states must not be recognized, as it

126. See *China Asks for Nothing*, *supra* note 24; Xiaoping, *supra* note 62.

127. See ZHOU, *supra* note 34, at 110.

128. See *id.*

129. See *id.*

illegally would undermine a state's sovereignty.¹³⁰ Zhou pointed to Manchuria as an example. Manchuria was a puppet state when it was under Japanese invasion, and its establishment was entirely orchestrated by Japanese troops and officials who were not part of a genuine independence movement.¹³¹ Manchuria was not supported by the Chinese people and was merely a tool of the Japanese government, so it lacked independence, autonomous will, stability and continuity—all of which are needed for statehood.¹³²

Zhou compared and contrasted the actions of the PRC and the United States towards emerging states. For example, he observed how the PRC had been supportive towards states that emerged from colonial liberation, such as Algeria, Yemen and Syria.¹³³ This point was in line with PRC policies at that time.¹³⁴ However, Zhou's assertion would appear to be inconsistent with what he wrote earlier in Chapter Two of the book—that a nation fighting for independence can be treated as a sovereign state—because presumably states can gain independence through contexts other than colonial liberation. As mentioned above, states typically have discretion in deciding which entities they recognize as states, within certain limitations. Zhou focused on the practice of the United States, which, as an imperialist state, usually used non-recognition or recognition dependent on certain conditions in order to achieve its diplomatic goals of intervening in other states' affairs.¹³⁵ Zhou pointed out how the U.S. government refused to recognize the Soviet Union and the PRC, thereby defying the people's right to choose their government and the principle of non-intervention.¹³⁶ Zhou's description of this as custom seems like a significant concession, which likely was unintentional, as it was shockingly far from the PRC's official policy.¹³⁷ At most, it shows his independence, or

130. *See id.*

131. *See id.* at 110–11.

132. *See id.*

133. *See* ZHOU, *supra* note 34, at 112.

134. *See generally* Xiaoping, *supra* note 62.

135. *See* ZHOU, *supra* note 34, at 128.

136. *See id.*

137. *See Celebrate that the Right of the People's Republic of China in the United Nations has been Resumed* [庆祝我国恢复在联合国的合法权利], PEOPLE'S DAILY [人民日报], Oct. 31, 1971; *Chinese People Must Liberate Tibet* [中国人民

at a minimum a lack of careful censorship of Zhou's work by the PRC government at that time. Either way, this example supports the characterization of Zhou's work as being scholarly in nature.

b. Succession of a State

Zhou asserted that the PRC, as a main participant of international law, is a continuation of China following its liberation, and not a new state.¹³⁸ Nevertheless, the liabilities that China undertook before the PRC came into power should be treated in a different way because the PRC is no longer that half-colonized state with its own history and social institutions.¹³⁹ Zhou was adamant that those liabilities that stemmed from unequal treaties from the past were unacceptable, and they must be dealt with separately.¹⁴⁰ This point was in line with PRC policies at that time,¹⁴¹ and it was progressive in light of Western policies at that time. Indeed, only a few commentators discussed forgiveness of odious debts by former governments during that time period.¹⁴² Oppenheim's *International Law* certainly was not one of them. Only in the past two decades have states actually started to forgive odious debts,¹⁴³ although it

一定要解放西藏], PEOPLE'S DAILY [人民日报], Sept. 7, 1949; *Never Allow the Foreign Invaders Annex the Territory of the People's Republic of China—Tibet* [决不容许外国侵略者吞并中国的领土—西藏], PEOPLE'S DAILY [人民日报], Sept. 3, 1949; *Superstitious Beliefs*, *supra* note 20; *The Forum of Students from Tibet and Neimenggu* [蒙藏学校师生分别座谈 斥英美印侵藏阴谋 藏族应与国内各民族团结一致, 在中共领导下, 斗争到底!], PEOPLE'S DAILY [人民日报], Sept. 6, 1949.

138. See ZHOU, *supra* note 34, at 155.

139. See *id.*

140. See *id.* at 156.

141. See *The People's Republic of China Welcomes the Authentic Friendly-Equal Diplomatic Relations* [新中国欢迎真正友好平等的邦交], PEOPLE'S DAILY [人民日报], Oct. 8, 1949 [hereinafter *Authentic Friendly-Equal Diplomatic Relations*].

142. See, e.g., D.P. O'CONNELL, THE LAW OF STATE SUCCESSION 187–89 (1956); D.P. O'Connell, *Independence and Problems of State Succession*, in THE NEW NATIONS IN INTERNATIONAL LAW AND DIPLOMACY 7, 26–30 (William V. O'Brien ed. 1965); Sarah Ludington & Mitu Gulati, *A Convenient Untruth: Fact and Fantasy in the Doctrine of Odious Debts*, 48 VA. J. INT'L L. 595 (2008) (discussing Alexander Sack's work from the 1920s on odious debts).

143. See Sabine Michalowski & Juan Pablo Bohoslavsky, *Ius Cogens, Transitional Justice and Other Trends of the Debate on Odious Debts: A*

presumably was not unusual to have a debtor state come up with that argument during any period of time. Zhou described the approach that the PRC took towards old treaties in the following manner: the PRC does not think that the old treaties continue to be valid or invalid, but rather that treaty obligations of the PRC and the Republic of China must be viewed separately.¹⁴⁴ Before the PRC acknowledges an old treaty, no foreign state can make a claim against the PRC based on that old treaty.¹⁴⁵ In essence, Zhou seemed to be saying that the PRC is a new state with regard to China's prior financial obligations, but it is not a new state for the purposes relating to the United Nations, for example.

With regard to China's representation at the United Nations, China is a founding member state and permanent member of the UN Security Council, so the PRC, as its successor, is the rightful heir to all these roles.¹⁴⁶ The victory of the Communist Revolution evicted the Kuomintang, yet the Republic of China still retained the UN seat at that time, which represented a clear violation of the state succession principle, according to Zhou.¹⁴⁷ Zhou asserted that the representation of the PRC in the UN is not an issue of a new country joining the United Nations, but rather a matter of reinstating the rights and status of China as a founding member state.¹⁴⁸ This point was in line with PRC policies at that time.¹⁴⁹ The PRC is not a country that became independent from another state or an independent country that resulted from colonial liberation, so there should be no need to look at whether the United Nations accepts the PRC as a new member state.¹⁵⁰ The PRC also

Response to the World Bank Discussion Paper on Odious Debts, 48 COLUM. J. TRANSNAT'L L. 59, 60–62 (2008) (discussing the forgiveness of odious debts by the United States and Norway, among others). *See generally* Emily F. Mancina, *Sinners in the Hands of an Angry God: Resurrecting the Odious Debt Doctrine in International Law*, 36 GEO. WASH. INT'L L. REV. 1239 (2004) (providing a modern normative argument for forgiveness of odious debts).

144. *See* ZHOU, *supra* note 34, at 157.

145. *See id.*

146. *See id.*

147. *See id.*

148. *See id.* at 158.

149. *See China Asks for Nothing*, *supra* note 24.

150. *See* ZHOU, *supra* note 34, at 159.

inherited all the property and assets previously owned by China before its liberation.¹⁵¹

4. States' Basic Rights and Duties

Chapter Four continued on by discussing states' basic rights and duties as embodied in the PRC's Five Principles of Peaceful Coexistence contained in the 1954 Agreement between the Republic of India and the People's Republic of China on Trade and Intercourse between Tibet Region of China and India:

1. mutual respect for each other's territorial integrity and sovereignty,
2. mutual non-aggression,
3. mutual non-interference in each other's internal affairs,
4. equality and mutual benefit, and
5. peaceful co-existence.¹⁵²

Yet again, Zhou spent a considerable amount of energy comparing the PRC's and imperialist approaches, emphasizing the PRC's peaceful approach compared to the more aggressive, interfering Western approach.¹⁵³ Zhou again quoted Oppenheim, this time in relation to his definition of intervention, and then he provided an interesting analysis of that definition, asserting that intervention is allowed by right and on humanitarian grounds.¹⁵⁴ The notion of humanitarian intervention was relatively common in Western international law literature during this time, even though not all agreed with it being a valid basis for intervention.¹⁵⁵ Interestingly,

151. See *id.* at 160.

152. *Agreement (with Exchange of Notes) on Trade and Intercourse between Tibet Region of China and India, China-India*, Apr. 29, 1954, 1958 U.N.T.S. 4307, <https://treaties.un.org/doc/publication/unts/volume%20299/v299.pdf>.

153. See ZHOU, *supra* note 34, at 189–90.

154. See *id.* at 190.

155. Compare Ian Brownlie, *Humanitarian Intervention*, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 217 (John Norton Moore ed. 1974), with Richard B. Lillich, *Humanitarian Intervention: A Reply to Ian Brownlie and a*

Oppenheim's *International Law* recognized the existence of the notion of humanitarian intervention while at the same time observing that the UN Charter "expressly rules out intervention in matters which are essentially within the domestic jurisdiction of the States."¹⁵⁶ Therefore, it would appear that Zhou diverges dramatically from Oppenheim's *International Law* on this point. Zhou elaborated that there were direct and indirect forms of intervention, with the former involving military force, propaganda and resolutions of international organizations, and the latter involving financial assistance, such as with the Marshall Plan and the Truman Doctrine.¹⁵⁷ Zhou then emphasized the PRC's commitment to non-intervention, in terms of interference both in other states' affairs and in PRC affairs, citing Indian's intervention in Tibet and the U.S. intervention in Taiwan as two examples.¹⁵⁸ This point was in line with PRC policies at that time, although the earlier part about intervention being allowed on humanitarian grounds certainly was not in line with PRC policies,¹⁵⁹ and it is inconsistent with what Zhou wrote later in the book.¹⁶⁰ Therefore, this would suggest either his views or the PRC's policies (or both) concerning intervention were complex during this time period, or that he mistakenly said humanitarian intervention was allowed when he meant to assert that states often (improperly) rely on humanitarian grounds when they intervene. Other commentators during this time period seem to have recognized the PRC's approach to humanitarian intervention as being complex and dependent on the exact circumstances involved.¹⁶¹ However, in support of the latter

Plea for Constructive Alternatives, in *LAW AND CIVIL WAR IN THE MODERN WORLD* 229 (John Norton Moore ed. 1974). See generally BRENDAN SIMMS & DAVID J.B. TRIM, *HUMANITARIAN INTERVENTION: A HISTORY* (2011); FERNANDO R. TESÓN, *HUMANITARIAN INTERVENTION: AN INQUIRY INTO LAW AND MORALITY* (2d ed. 1996).

156. OPPENHEIM, *supra* note 59, at 312–13.

157. See ZHOU, *supra* note 34, at 190–91.

158. See *id.* at 192–93.

159. See Xiaoping, *supra* note 62; *The U.S. Imperialism Takes the Advantages of the United Nations to Commit the Crime of Aggression* [美帝国主义利用联合国进行侵略的罪行], PEOPLE'S DAILY [人民日报], Jan. 9, 1965.

160. See *infra* pt. III(6).

161. See Qi Zhang, *The Changing China and Humanitarian Intervention* [变革的中国与人道主义干预], 2015 CNKI [世界经济与政治: 世界政治] 103–112

view, Zhou went on to analyze the non-aggression principle established by the UN Charter and then observed the lack of commitment to this principle among imperialists, giving the example of U.S. aggression in Korea and Taiwan and ridiculing the UN accusations that the PRC could be an invader.¹⁶² Zhou distinguished PRC actions in Korea from U.S. actions by saying the PRC's actions had involved countering military intervention and, therefore, was not military intervention *per se*.¹⁶³ Zhou asserted that this was in line with the PRC's non-aggression principle,¹⁶⁴ which extended to territories of other countries, including where the Kuomintang is located.¹⁶⁵ As already noted above, this last point seems so different from PRC policy at that time (and even now) that it arguably stands as the best evidence of Zhou's independence, as careful censors surely would not have allowed such a significant concession.

Moving on to equality and mutual benefit, Zhou analyzed unequal treaties and advocated for their cancellation in order to end the oppression and exploitation of Chinese people, instead insisting on reciprocity in accordance with international law.¹⁶⁶ Zhou identified how Western approaches to international law focus on equality in form, not in practice, which he deemed inadequate.¹⁶⁷ He cited the example of the Sino-American Commercial Treaty of 1946 between the United States and the Kuomintang, which appeared on its face to be equal but ultimately was unequal due to the unequal economic power of the two parties at the time of negotiation that gave the United States greater benefits than China under this treaty.¹⁶⁸

(2015).

162. See ZHOU, *supra* note 34, at 201–04.

163. See *id.* at 204–05.

164. See Xiaoping, *supra* note 62; Jing Wang, *The People's Republic of China's Exploration in Peaceful Settlement of Taiwan Problem in the Early Years* [建国初期中国政府为和平解决台湾问题所作的探索], 1994 BEIJING PARTY HIST. RES. CTR. [北京党史研究] 21–27 (1994); Shizhu Zhu, *Responding to the Changing Situation, Peace is the Most Precious* [因应变局, 以和为贵], 1998 HUAIYIN NORMAL UNIV. J. [淮阴师范学报] 30–33 (1998).

165. See ZHOU, *supra* note 34, at 205.

166. See *id.* at 213–14.

167. See *id.* at 214.

168. See *id.*

a. Jurisdiction

Concerning jurisdiction, Zhou criticized the United States' garrison policies in South Korea and Japan, which led to offences committed by garrison troops not punishable due to extraterritoriality.¹⁶⁹ Zhou compared this with the Polish-Soviet Treaty of 1956 where the Soviet Garrison was under the jurisdiction of the Polish courts rather than enjoying extraterritoriality.¹⁷⁰ Zhou further stated that it would be more reasonable for the foreign state to recognize the absolute jurisdiction of the state being garrisoned to preserve the territorial sovereignty of the state being garrisoned.¹⁷¹ He felt that having a garrison in a foreign state is abnormal, as it would harm the jurisdiction of the state being garrisoned, and such harm should be eliminated as soon as possible.¹⁷² The Chinese Volunteers in the Korean War withdrew in 1958, and yet U.S. troops have stayed in South Korea until now.¹⁷³ This not only damages South Korea's sovereignty, but also threatens other states, which is clearly unacceptable in contemporary international law.¹⁷⁴ Of course, Zhou did not explore how South Korea's consent to having the U.S. troops remain in South Korea impacts his assertion of damage to sovereignty.

b. State Responsibility

Concerning state responsibility, Zhou asserted that, while states enjoy rights, they also have a duty not to infringe other states' enjoyment of their rights.¹⁷⁵ This point was in line with PRC policies at that time,¹⁷⁶ and reflected the mainstream,

169. *See id.* at 220–21.

170. *See id.*

171. *See* ZHOU, *supra* note 34, at 220–21.

172. *See id.* at 221.

173. *See id.*

174. *See id.*

175. *See id.* at 233.

176. *See* Xiaoping, *supra* note 62; *Authentic Friendly-Equal Diplomatic Relations*, *supra* note 141; *see also* *Geneva Conference Continued to Discuss the Korea Issues, Premier Zhou Enlai Made Important Speech and Supported the Unification of Korea* [日内瓦会议继续讨论朝鲜问题 周恩来外长作重要发言 并支持南日关于恢复朝鲜统一的建议], PEOPLE'S DAILY [人民日报], Apr. 30, 1954.

state-centered approach to international law at that time as well.¹⁷⁷ Oppenheim's *International Law* shared these same mainstream views.¹⁷⁸ A breach of this duty would be considered as international delinquency, which may trigger state responsibility,¹⁷⁹ which again was reflected in the Western international law literature at that time.¹⁸⁰ Oppenheim's *International Law* also shared these views.¹⁸¹ Zhou acknowledged that the PRC would strongly protest and ask for a determination of state responsibility when the rights and interests of the PRC are infringed, especially when they are infringed by imperialist states.¹⁸²

For infringement on territorial integrity, the PRC had protested strongly the U.S. military intervention in Taiwan and had filed a complaint to the United Nations in 1950.¹⁸³ In the same year, the PRC also protested against the U.S. infringement on the airspace of China during the Korean War.¹⁸⁴ Two requests were made to the United States: (1) to punish the US Air Force for the atrocities it committed; and (2) to seek compensation for all losses suffered by the PRC.¹⁸⁵ Another occasion where the PRC protested in order to defend its territorial integrity was when the PRC protested France's invasion of Vietnam in 1950, especially since French troops occasionally took military actions at the borders between China and Vietnam, which caused casualties of Chinese troops and civilians.¹⁸⁶

For infringement on national dignity, the PRC protested against the Japanese Nobusuke Kishi government for insulting

177. See, e.g., STARKE, *supra* note 55, pt. 3 (entitled "Rights and Duties of States"); SWIFT, *supra* note 55, at 535–39.

178. See OPPENHEIM, *supra* note 59, at 259–61.

179. See ZHOU, *supra* note 34, at 233.

180. See, e.g., STARKE, *supra* note 55, at 330–31; see also Eduardo Jiménez de Aréchaga, *International Responsibility*, in MANUAL OF PUBLIC INTERNATIONAL LAW 531, 540 (Max Sørensen ed., 1968).

181. See OPPENHEIM, *supra* note 59, at 345–47.

182. See ZHOU, *supra* note 34, at 233.

183. See *id.* at 241–42.

184. See *id.*

185. See *id.*

186. See *id.*

the national flag of the PRC in Nagasaki, Japan.¹⁸⁷ In addition, the PRC government also protested when the Vietnamese government forced the Chinese immigrants there to change nationality.¹⁸⁸ All of these examples show Zhou's determination to portray China's policies and positions in the best light possible.

5. Residents

Chapter Five focuses on various aspects of how international law impacts residents of a state. Concerning nationality, Zhou noted how the PRC adopted the principle of *jus sanguinis* (or right of blood) when determining the nationality of a person, as opposed to the *jus soli* principle.¹⁸⁹ This point was in line with PRC policies at that time,¹⁹⁰ and it also was in line with Western international law textbooks at that time, although they used the Latin phrase but said the nationality was through the parents, not through blood *per se*.¹⁹¹ Similarly, Oppenheim's *International Law* mentioned nationality by birth, but again it was not framed in terms of a right of blood *per se*.¹⁹² Some commentators see the acquiring of Chinese nationality by birth and by blood as separate.¹⁹³ This distinction might suggest more of a racial element to China's approach to nationality determinations, although more research on this point is needed. In any event, this point emphasizes a difference between Oppenheim's *International Law* and Zhou's book, even if small. The PRC law recognized not only the male line for nationality

187. See ZHOU, *supra* note 34, at 242–43.

188. See *id.*

189. See *id.* at 265.

190. See Nationality Law of the People's Republic of China [中华人民共和国国籍法] (promulgated by the Standing Comm. Nat'l. People's Cong., effective Sep. 10, 1980) art. 4–5.

191. See, e.g., LEVI, *supra* note 55, at 150–51; SCHWARZENBERGER & BROWN, *supra* note 55, at 113.

192. See OPPENHEIM, *supra* note 59, at 651–52.

193. See Ronald C. Brown, *China's Employment Discrimination Laws During Economic Transition*, 19 COLUM. J. ASIAN L. 361, 386–87 (2006).

purposes, but also the female line,¹⁹⁴ which was more progressive than that of Canada at that time, for example.¹⁹⁵

On a foreigner's entry and exit of a state, Zhou asserted that this is a matter entirely within a state's sovereignty.¹⁹⁶ A state may, for security or other legitimate reasons, refuse entry of a foreigner.¹⁹⁷ Zhou asserted that, in practice, only people with mental illness, an infectious disease or a criminal record could be refused entry.¹⁹⁸ Zhou emphasized that it would be an international problem if a state were to refuse entry of a person based on their race or nationality.¹⁹⁹ Examples that Zhou gave involve past U.S. anti-Chinese and anti-Japanese immigration policies.²⁰⁰ Such race discrimination would harm the friendship between states, undermine the other's national dignity and violate the equality principle.²⁰¹ These points were in line with PRC policies at that time.²⁰² These points were progressive in light of prior Western policies, which involved a right of states to deny foreigners access to their territory as well as to expel them from their territory, with some exceptions.²⁰³ This view was reflected in Oppenheim's *International Law*.²⁰⁴ As with the fight of ex-colonies for independence, it is not clear from the available evidence what the PRC's exact policy was on this particular point during this time. There is no record indicating

194. See ZHOU, *supra* note 34, at 265.

195. See Karen Knop & Christine Chinkin, *Remembering Chrystal MacMillan: Women's Equality and Nationality in International Law*, 22 MICH. J. INT'L L. 523, 579–81 (2001) (citing, *inter alia*, Benner v. Canada (Secretary of State), [1997] 1 S.C.R. 358).

196. See ZHOU, *supra* note 34, at 275–76.

197. See *id.*

198. See *id.* at 276.

199. See *id.*

200. See *id.*

201. See *id.*

202. See *Regulations of the People's Republic of China on Frontier Inspection of Exit from or Entry Into the Country* [中华人民共和国出境入境检查条例], GAZETTE STATE COUNCIL PEOPLE'S REPUBLIC CHINA [中华人民共和国国务院公报], Sept. 1, 1995 (effective); *Frontier Inspection Regulation* [边防检查条例], Apr. 30, 1965 (ceasing to be effective).

203. See, e.g., DANIEL C. TURACK, *THE PASSPORT IN INTERNATIONAL LAW* 233–34 (1972); BROWNLIE, *supra* note 55, at 519; GUY S. GOODWIN-GILL, *INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES* 3–83 (1978).

204. See OPPENHEIM, *supra* note 59, at 675–95.

that the PRC ever refused the entry of people of a certain race or nationality. Moreover, following the PRC's style of peaceful and friendly diplomacy, it can be surmised that the PRC would not refuse entry of a particular race. Nevertheless, there is no clear and official declaration of the PRC stating that China would definitely not deny the entry of certain races. Therefore, it is difficult to say whether Zhou's assertion was in line with PRC policy.

Concerning extradition, Zhou observed that a consensus existed among capitalist states that political prisoners are not to be extradited.²⁰⁵ However, the Inter-American Convention of Extradition of 1933 gave a state that was requested to extradite the right to decide whether a certain prisoner is a political prisoner or not.²⁰⁶ Some states may then, for their own benefits, abuse the extradition law or distort the meaning of political offense.²⁰⁷ Zhou asserted that this is how imperialist states extradite political prisoners who fought for national liberation or otherwise protect their own criminals.²⁰⁸

6. Territory

This Chapter introduced various aspects of territory, including land, territorial waters, territorial seas and territorial airspace. While Zhou analyzed all kinds of theories and reviewed the historical development of those theories in great detail, one proposition remains the same for all aspects of territory: no state's territorial integrity should be undermined. Any intrusion to a country's territory would be an issue of sovereignty and would be against international law. This point was in line with PRC policies at that time.²⁰⁹ Zhou also gave examples to support his criticism of imperialist aggression, such

205. See ZHOU, *supra* note 34, at 311.

206. See *id.*

207. See *id.*

208. See *id.*

209. See *The Warship of the United States Invaded Our Territorial Sea Twice, the People's Republic of China Issued 356th Serious Warning* [美国军舰两次入侵中国领海, 中国提出严重警告], PEOPLE'S DAILY [人民日报], Jan. 11, 1965; *The Government of the People's Republic of China Made Statement Severely Condemning that the US Imperialism Expanding the War* [我国政府发表声明强烈谴责美帝扩大战火], PEOPLE'S DAILY [人民日报], Jan. 13, 1965.

as the Suez Canal and Panama Canal incidents. In addition, Zhou interpreted the theories that the United States and other Western states adopted with regard to territory, such as the 3-mile territorial sea rule and the freedom of the outer space, as strategic moves to restrict other states' development.

a. Theories of Territory

Although a state is, under national law, not the proprietor of the land it rules, it is, under international law, both ruler and proprietor.²¹⁰ Zhou thought that *théorie du territoire object* is incorrect because it does not recognize the ruler as the proprietor of land.²¹¹ Instead, the theory contends that the state only rules the people on the territory and not the territory itself.²¹² If a state only rules the people on the territory, it leaves open the question about those territories without people living on them.²¹³

Théorie du territoire-limite suggests that territory is the material boundary within which a state may exercise its powers.²¹⁴ This is a negative way of looking at territory.²¹⁵ In fact, according to Zhou, territory does not negatively limit the ambit of a state's powers.²¹⁶ A state can, according to international law, exercise powers outside of its territory.²¹⁷ An example would include the ability of states to arrest pirates on the high seas,²¹⁸ just as states also can exercise jurisdiction over their ships while they are on the high seas.²¹⁹ This point was in line with PRC policies at that time,²²⁰ and it was in line with Western international law literature at that time as well.²²¹

210. See ZHOU, *supra* note 34, at 322.

211. See *id.* at 321.

212. See *id.*

213. See *id.*

214. See *id.* at 322.

215. See *id.*

216. See ZHOU, *supra* note 34, at 322.

217. See *id.*

218. See *id.*

219. See *id.*

220. See *The Statement of the People's Republic of China Concerning the Territorial Sea* [中华人民共和国政府关于领海的声明], LAW SCI. [法学], Sept. 4, 1958 [hereinafter *Territorial Sea*].

221. See, e.g., BROWN, *supra* note 55, at 104–06; BROWNLIE, *supra* note

Zhou then cited Hans Kelsen's *théorie de la compétence*, which says that territory falls within the ambit of states' powers as defined by international law.²²² This theory denies the concept of sovereignty of a state or proposes that international law is higher than sovereignty, which undermines the concept of sovereignty and which is consistent with Western, capitalist approaches to international law.²²³ Zhou emphasized how this theory even proposes that the territories of two or more states may overlap with each other, which he saw as essentially an excuse for imperialism and colonialism.²²⁴

Concerning fictional parts of territory, or *territoire fictif*, warships or other ships on the high seas are the "floating parts" of a state's territory, which Zhou saw as far-fetched and unacceptable inasmuch as one of the main features of territory is its fixed nature.²²⁵ Also, it is impossible for the water surrounding a ship to be the territory of the flag state of that ship.²²⁶ Nevertheless, Zhou acknowledged that territories of a state can be separated, such as East and West Pakistan.²²⁷ Some states can have a territory that is completely surrounded by territories of other countries, which is called an enclave.²²⁸ States with coasts can have island territories, such as the many islands of the PRC, including Taiwan.²²⁹ This point was in line with PRC policies at that time.²³⁰

Zhou took a step back and explored the social and political significance of territory,²³¹ which was considerably original among international law commentaries at that time. In its

55, at 243-47; HARRIS, *supra* note 55, at 351-52; SCHWARZENBERGER & BROWN, *supra* note 55, at 75-76; STARKE, *supra* note 55, at 309-12; SWIFT, *supra* note 55, at 202, 213-14.

222. See ZHOU, *supra* note 34, at 323.

223. See *id.*

224. See *id.*

225. See *id.* at 324.

226. See *id.*

227. See ZHOU, *supra* note 34, at 324.

228. See *id.* at 324-25.

229. See *id.*

230. See *The Asian and African People Would Not Tolerate the Gun-Boat Policy of the US, the "Pioneer" in Myanmar Severely Condemned the US for Intervening in China's Internal Affairs* [亚非人民不会容忍美国的"炮舰政策" 缅甸"先锋报"谴责美国干涉中国内政], PEOPLE'S DAILY [人民日报], Sept. 2, 1958.

231. See ZHOU, *supra* note 34, at 325-26.

social meaning, territory is the foundation of a state.²³² A state's territory is fixed, and residents of that state can exploit the resources on that territory in perpetuity.²³³ Therefore, territory is the foundation for the development of a state.²³⁴ In its political meaning, territory is where a state may freely exercise its powers, based on the exclusivity of territory.²³⁵ That means a state may independently exercise its powers within its territory without any impediment and may exclude any competition and interference from the outside.²³⁶ Therefore, a state may, in accordance with its people's will, arrange state affairs and control the destination of the state.²³⁷ If, following the *théorie de la compétence* that states may only act in accordance with international law, then states may not exercise their powers freely on their territory.²³⁸ If territories can overlap, then territories lose their exclusivity, and so the *théorie de la compétence* clearly is wrong, as it removes the meaning of territory and it does not comply with international law.²³⁹ In fact, according to Zhou, states act on their territory according to their sovereignty, and they do not acquire authority from international law.²⁴⁰ As a result, states must not interfere with other states' sovereignty over their own territories.²⁴¹

This law fits with the interests of states within their international relations.²⁴² Nevertheless, states that have adopted a system of imperialism and colonialism never respect other states' sovereignty and would make excuses to invade other states' territories and destroy their completeness.²⁴³ Zhou sees this as the main cause for international disputes and wars that threaten world peace.²⁴⁴

232. *See id.* at 325.

233. *See id.*

234. *See id.* at 325–26.

235. *See id.* at 326.

236. *See id.*

237. *See* ZHOU, *supra* note 34, at 326.

238. *See id.*

239. *See id.*

240. *See id.*

241. *See id.*

242. *See id.*

243. *See* ZHOU, *supra* note 34, at 326.

244. *See id.*

b. Territorial Waters

Zhou relied on a series of examples to explain the international law relating to territorial waters. First, the Suez Canal used to be a neutral zone under the Convention of Constantinople Treaty of 1888, but it came under British control in 1914, and subsequently became a tool of British imperialism policy.²⁴⁵ In the Anglo-Egyptian treaty of 1936, the United Kingdom agreed to withdraw all of its troops from Egypt and recognized the Suez Canal as part of Egypt, but the treaty also stipulated that the Suez Canal would remain an important passage of the British Empire.²⁴⁶ In 1956, the Egyptian government privatized the Suez Canal and fought against the British and French armies, and Egypt was able to regain control and sovereignty over the Suez Canal with the help of peaceful states and peoples around the world.²⁴⁷

Zhou's next example was the Panama Canal. He emphasized how the United States pushed for Panama's Declaration of Independence in 1908, then recognized Panama as a state three days after the Declaration and quickly signed the Hay-Bunau-Varilla Treaty with Panama to allow the United States to use, possess and control the Canal.²⁴⁸ The Canal became neutral and open for other states to use in 1914.²⁴⁹ However, Zhou pointed out that the United States violated the neutrality principle and equality principle by building strongholds near the Canal and waiving taxes for U.S. ships, all of which he saw as ignoring Panama's sovereignty.²⁵⁰ The people of Panama opposed U.S. rule over the Canal, and they eventually demanded the United States to leave in 1964,²⁵¹ with the Panamanian government eventually taking back management of the Canal.²⁵² Zhou emphasized how the PRC showed support to the Egyptians in the Suez Crisis and the

245. *See id.* at 346–47.

246. *See id.*

247. *See id.*

248. *See id.* at 348–50.

249. *See ZHOU, supra* note 34, at 348–50.

250. *See id.*

251. *See id.*

252. *See id.*

Panamanian people in taking back control over the Canal in 1956 and 1964, respectively.²⁵³

c. Territorial Sea

Zhou recognized that different states have different limits on their territorial seas, such as Sweden and Norway with four miles, Spain and Portugal with six miles, Mexico with nine miles and Russia with twelve miles.²⁵⁴ Zhou cited Rousseau when asserting that international practice is that states may set this limit by their discretion.²⁵⁵ This point was in line with PRC policies at that time.²⁵⁶ Numerous Western international law commentators reflected this variety in approaches and indeterminacy with the breadth of territorial seas, and it is difficult to say that there was one established limit under customary international law at that time.²⁵⁷ In any event, Oppenheim's *International Law* did not discuss these specific limits,²⁵⁸ presumably because it predated these other Western international law books by over a year, before the controversy had come to a head. As with the Western commentators, Zhou noted that the United Kingdom and the United States insisted on the 3-mile limit rule, both in their national laws and in treaties.²⁵⁹ Both were opposed to other states having more than three miles, and they especially objected to the twelve-mile limit based on strategic and economic considerations.²⁶⁰ For example, when other states expand their territorial seas, the UK and U.S. fleets' activities on the high seas are limited, especially when it

253. *See id.* at 350.

254. *See id.* at 358–59.

255. *See* ZHOU, *supra* note 34, at 358–59.

256. *See Territorial Sea*, *supra* note 220.

257. *See, e.g.*, BROWNLIE, *supra* note 55, at 191–99; HARRIS, *supra* note 55, at 310–11; LEVI, *supra* note 55, at 137–38; SCHWARZENBERGER & BROWN, *supra* note 55, at 100–05 (6th ed. 1976); STARKE, *supra* note 55, at 226–31; SWIFT, *supra* note 55, at 263–69. *But see* BROWN, *supra* note 55, at 95 (“The extent of the territorial waters or territorial sea is decided by the power to which they belong, and varies from State to State”).

258. *See, e.g.*, OPPENHEIM, *supra* note 59, at 69, 587–89.

259. *See* ZHOU, *supra* note 34, at 358–59.

260. *See id.*

comes to combating enemies' submarines in wartime.²⁶¹ They also see this twelve-mile rule as impeding the passing of commercial ships and airplanes, as well as harming their fishing efforts.²⁶² Zhou observed that this imperialist strategy is evident from the recent Vienna Law of the Sea Conference.²⁶³

Zhou explained that there are two schools of thought on the limits of territorial seas.²⁶⁴ The first is the three-mile-limit theory adopted by states with strong navies, such as the United States and the United Kingdom, as well as Germany and Japan in the past, which does not allow other states to freely expand their territorial seas.²⁶⁵ Another theory is Rousseau's theory where all states have the right to set limits for their own territorial seas and that there is no set limit on the territorial seas,²⁶⁶ as already mentioned above. Zhou emphasized that the three-mile limit previously adopted by China was never recognized since the establishment of the PRC.²⁶⁷ The PRC established its territorial sea system in 1958, which Zhou noted remained at a twelve-mile limit at the time of his writing.²⁶⁸ This point was in line with PRC policies at that time.²⁶⁹

d. Airspace

Zhou asserted that the PRC firmly defends its airspace, indicating that foreign aircraft may not trespass into the PRC's airspace without permission.²⁷⁰ As an example, Zhou pointed to how the PRC shot down a U.S. military aircraft that trespassed into the airspace over the northeast of China during the Korean

261. *See id.*

262. *See id.*

263. *See id.*

264. *See* ZHOU, *supra* note 34, at 359.

265. *See id.*

266. *See id.*

267. *See id.* at 380.

268. *See id.*

269. *See The Standing Committee of the National People's Congress of People's Republic of China Ratified the Statement Concerning the Territorial Sea* [我人大常委会批准我政府关于领海的声明], PEOPLE'S DAILY [人民日报], Sept. 5, 1958; *Territorial Sea*, *supra* note 220.

270. *See* ZHOU, *supra* note 34, at 405.

War, with the U.S. soldiers aboard the aircraft being convicted and imprisoned.²⁷¹

In addition to defending its airspace, Zhou highlighted how the PRC also built its civil aviation routes to foreign countries primarily through the Warsaw Convention of 1929, not the Chicago Convention on International Civil Aviation of 1944.²⁷² In particular, Zhou observed that the routes that the PRC developed with foreign states were based on reciprocity and were concluded through negotiation.²⁷³ This point was in line with PRC policies at that time.²⁷⁴ It was noticeably different from the effort at the time to bring about greater multilateral cooperation concerning aviation routes.²⁷⁵

e. Outer Space

Zhou stressed that the United States pretends to believe that outer space does not belong to any state but is common space for all states to use because the United States is more advanced in terms of space technology.²⁷⁶ Zhou believed that such a theory would allow the United States to unacceptably dominate outer space.²⁷⁷ The result of this is that the territorial airspace of other states is undermined or violated.²⁷⁸ From Zhou's perspective, the correct view of outer space was that international law did not limit the height of a state's territorial space, going out indefinitely into space.²⁷⁹ Therefore, until there is an international convention that regulates outer space, all countries should preserve their exclusive right to their territorial airspace, which includes outer space.²⁸⁰ It would appear that international law at that time had not yet settled the question of where territorial airspace ends and where outer

271. *See id.*

272. *See id.*

273. *See id.*

274. *See Authentic Friendly-Equal Diplomatic Relations*, *supra* note 141.

275. *See generally* H.A. WASSENBERGH, PUBLIC INTERNATIONAL AIR TRANSPORTATION LAW IN A NEW ERA (1976).

276. *See* ZHOU, *supra* note 34, at 413.

277. *See id.*

278. *See id.*

279. *See id.*

280. *See id.*

space begins,²⁸¹ and so Zhou was not expressly going against established international law according to Western textbooks on this point.

7. Territory Continued

Zhou's Chapter Seven continued with a detailed analysis of territory concerning boundaries. In general, Zhou opposed the theory of natural boundaries on the basis that its ambiguity provided states with an excuse to expand their territories. With regard to resolving boundary disputes, Zhou stated that the PRC's method of resolving disputes is through peaceful negotiation, and he gave examples of some recently concluded treaties with the PRC's neighbors. Concerning the acquisition of land, Zhou emphasized various methods of land acquisition, including annexation, conquest, *res nullius* and cession. Interestingly, Zhou disagreed with all of these methods of territorial acquisition on the grounds of their illegality and unfairness. Zhou strongly criticized all of these methods in this chapter, along with the imperialist states that have promoted these methods.

a. Boundaries

When setting a boundary or a frontier, Zhou asserted that the two states have discretion in deciding where to set the boundary.²⁸² This point was in line with PRC policy at that time.²⁸³ Western international law commentators tend not to

281. See, e.g., BROWNLIE, *supra* note 55, at 122 (recognizing unresolved issues concerning the outer limits of sovereignty); LEVI, *supra* note 55, at 136–37 (recognizing as valid one theory (among others) that territorial airspace had an unlimited height, but also asking the question of how far upwards does a state's territorial airspace extend, without answering the question); OPPENHEIM, *supra* note 59, at 517–18 (citing J.C. Cooper, *High Altitude Flights and National Sovereignty*, 4 INT'L L.Q. 411 (1951)) (recognizing same); STARKE, *supra* note 55, at 195–204 (recognizing same). But see BROWN, *supra* note 55, at 93 (implying that the sovereign airspace is limited to the atmosphere); SCHWARZENBERGER & BROWN, *supra* note 55, at 76, 100 (implying the same).

282. See ZHOU, *supra* note 34, at 422.

283. See *Boundary Treaty Between the People's Republic of China and the President of the Union of Burma*, CHINA-MYAN., Oct. 1, 1960, CIA-RDP08C01297R000100190005-8, <https://www.cia.gov/library/readingroom/doc>

specifically say that territorial boundaries were based on states using their discretion when deciding the boundary, although that can be implied from the discussion of boundaries, with the possible exception being when natural boundaries such as rivers change their location.²⁸⁴ Oppenheim's *International Law* appears to follow this general approach in the international law literature.²⁸⁵ If two states are separated by a mountain, the boundary can be set at the ridge, the watershed or the foothill.²⁸⁶ If the boundary is set at the foothill, the whole of the mountain will become territory of one of the states.²⁸⁷ For example, before British India created the McMahon Line, the boundary between Tibet and India was at the south foothill of the Himalayas, and so part of Chinese territory was illegally ceded by the McMahon Line.²⁸⁸

Zhou noted that, in international relations, there is a theory of determining state boundaries by looking at natural boundaries, such as mountains or rivers.²⁸⁹ Zhou asserted that such a theory clearly would be a political one because it reflects expansionist policies.²⁹⁰ For example, in a meeting between the Chinese and Indian officials regarding the Sino-Indian Border Issue, India proposed to adopt the natural boundary theory, which would have enabled India's expansionist policy.²⁹¹

b. Border Dispute Resolution

Zhou pointed out that, since the establishment of the PRC, the PRC proposed to resolve border issues with its neighboring states through negotiation.²⁹² For example, by the mid-1960s, the PRC had resolved its border disputes with Afghanistan,

s/CIA-RDP08C01297R000100190005-8.pdf.

284. See, e.g., BROWN, *supra* note 55, at 94; BROWNLIE, *supra* note 55, at 127–28. But see STARKE, *supra* note 55, at 217 (noting how boundaries can be “generally acknowledged without express declaration”).

285. See OPPENHEIM, *supra* note 59, at 530–35.

286. See ZHOU, *supra* note 34, at 422.

287. See *id.*

288. See *id.*

289. See *id.* at 426.

290. See *id.*

291. See *id.*

292. See ZHOU, *supra* note 34, at 429.

Burma, Mongolia, Nepal and Pakistan through negotiated border treaties, with the exceptions of the Sino-Soviet border negotiation that still was on-going and the Sino-India border negotiation where India was refusing to negotiate.²⁹³

c. Acquisition of Territory

Zhou analyzed various methods of acquiring territory. Starting with annexation, he pointed out that acquisition through the natural increase of land, such as a delta formed in a river or a new island that emerged from sea, is obviously legal.²⁹⁴ However, some annexations may be artificial, such as building a dam on a river or by the shore to expand the boundary of a country, which would be illegal if the consent of the state on the other side was not received.²⁹⁵ Such detailed analysis of this area of international law seems overwhelmingly original among commentaries at that time.

Concerning *terra nullius*, Zhou noted that Western jurists generally regard this as a primitive way of acquiring territory.²⁹⁶ He then asserted that it is entirely a political arrangement that enables or justifies acts of aggression by colonizing states.²⁹⁷ Zhou speculated that this method of acquisition would become less common in the future as there was not much *terra nullius* left.²⁹⁸ Zhou did not state what territories still could be considered *terra nullius*. Regardless, Zhou concluded that this method of acquisition is illegal because it ignores the claims of the indigenous populations there, which leads to a violation of human rights and the principle of self-determination.²⁹⁹ This point was in line with PRC policies at that time.³⁰⁰ However, this went against Western international law textbooks from this time, which recognized territorial acquisition through discovery

293. *See id.*

294. *See id.* at 445–46.

295. *See id.*

296. *See id.* at 446–47.

297. *See id.*

298. *See ZHOU, supra* note 34, at 446–47.

299. *See id.*

300. *See Superstitious Beliefs, supra* note 20, at 1; *Resist Aggression, Peaceful Coexistence, supra* note 73.

as legal, as long as the discoverer showed evidence of actually taking possession and control of that territory.³⁰¹ Oppenheim's *International Law* is included among those textbooks.³⁰² This does not necessarily mean that international law is not evolving or will not evolve in the direction of voiding prior instances of territorial acquisition through discovery.³⁰³

When it comes to conquest, Zhou dismissed it as being an excuse for aggression and expansion.³⁰⁴ Zhou believed there was no legitimate reason to justify conquest.³⁰⁵ With cession, Zhou described it as an unconditional mandatory transfer of land, which typically happens through treaties that result from war.³⁰⁶ Zhou said that cession had been recognized as a legitimate way of acquiring territory under international law, although its legitimacy should be reconsidered.³⁰⁷ Zhou recognized that Article 2 of the UN Charter allows for cession of territory, so it would be legitimate even if that cession was a result of war.³⁰⁸ However, he asserted that there is disguised cession, which is a de facto form of cession that actually is an occupation.³⁰⁹ Such an arrangement would constitute an imperialist form of aggression.³¹⁰ One cannot say that the original state loses sovereignty over this territory in such a situation.³¹¹ This point was in line with PRC policies at that time.³¹² Zhou gave the example of the PRC taking back its

301. See, e.g., BROWNLIE, *supra* note 55, at 149–50; SWIFT, *supra* note 55, at 121–23 (but noting that discovery is of limited importance now because of the current lack of terra nullius). But see SCHWARZENBERGER & BROWN, *supra* note 55, at 97 (noting that discovery leads to an inchoate title).

302. See OPPENHEIM, *supra* note 59, at 558–59.

303. See generally Danielle C. Davis, *Land in the Second Decade: The Evolution of Indigenous Property Rights and the Energy Industry in the United States and Brazil*, 34 ENERGY L.J. 667 (2013); Kent McNeil, *Self-Government and the Inalienability of Aboriginal Title*, 47 MCGILL L.J. 473 (2002).

304. See ZHOU, *supra* note 34, at 449–50.

305. See *id.*

306. See *id.* at 451–52.

307. See *id.*

308. See *id.*

309. See *id.* at 453–54.

310. See ZHOU, *supra* note 34, at 453–54.

311. See *id.*

312. See *Authentic Friendly-Equal Diplomatic Relations*, *supra* note 141; *Common Program of the Chinese People's Political Consultative Conference* [中国人民政治协商会议共同纲领], PEOPLE'S DAILY [人民日报], Sept. 30, 1949.

previously leased lands except for Kowloon in Hong Kong.³¹³ In places like Panama, where the people demanded the return of territorial control to the original state, Zhou asserted that the state that engaged in the disguised cession would not be able to continue to occupy the territory in question, such as the Panama Canal.³¹⁴ Zhou denigrated imperialist states' efforts to create spheres of influence in order to create a connection to a piece of territory, especially in China, and concluded that such efforts cannot be justified.³¹⁵

Zhou interestingly observed that these methods of territorial acquisition came from Roman law relating to privatizing property, which reflects contemporary imperialist and colonialist sentiments.³¹⁶ Contemporary international law now prohibits acquisition through conquest, and the completeness of a state's territory must remain intact.³¹⁷

8. The High Seas

This chapter on the high seas essentially is descriptive in nature. In it, Zhou provided a review of the legal history and the laws that concern the high seas. Zhou did not express many opinions or otherwise criticize any particular legal principles, which was different from the prior chapters that contained much criticism. Therefore, this Article moves on to more interesting analysis by Zhou.

9. Diplomatic Relations

Chapter Nine on diplomatic relations essentially outlined the PRC policy at that time. In particular, it set out the requirements for the PRC to build diplomatic relationships with other countries: (1) renounce relationships with the Kuomintang; and (2) adopt a friendly attitude towards the PRC. Diplomatic relations were to be formed through negotiation with

313. See ZHOU, *supra* note 34, at 453–54.

314. See *id.*

315. See *id.* at 455–56.

316. See *id.* at 456.

317. See *id.*

the PRC, based on the principles of equality, reciprocity and mutual respect of each other's territory and sovereignty. This Chapter also analyzed other unofficial forms of diplomatic relationships such as semi-diplomatic relationships and citizen diplomacy. This point on renouncing relationships was in line with PRC policies at that time.³¹⁸ These conditions for entering into diplomatic relations with the PRC seem reasonable, given the politics at the time.

Zhou started by observing that diplomatic relationships between states can take various forms.³¹⁹ The most common form is a formal and thorough diplomatic relationship, although there also are semi-diplomatic relationships that are mainly through civilians.³²⁰ For formal diplomatic relationships, the main characteristic is when both states send their diplomats to the other, and the relationship is based on sovereign equality and mutual consent.³²¹ This basis for diplomatic relations seems well established in the Western literature on international law at that time, including Oppenheim's *International Law*, although the connection between diplomatic relations and equality usually is not mentioned in the same section.³²² Zhou observed that the PRC has its own way of commencing a diplomatic relationship with another country. For example, there are certain conditions and procedures that must be satisfied, which are specified in the Common Program of The Chinese People's Political Consultative Conference in Article 56:

All those foreign governments who renounce their relationships with the Kuomintang and adopt a friendly attitude towards the PRC may negotiate with the PRC government to establish diplomatic relationship, on the basis of equality, reciprocal

318. See *Authentic Friendly-Equal Diplomatic Relations*, *supra* note 141.

319. See ZHOU, *supra* note 34, at 506–07.

320. See *id.*

321. See *id.*

322. See, e.g., OPPENHEIM, *supra* note 59, at 22–23, 263–67; SCHWARZENBERGER & BROWN, *supra* note 55, at 52–53, 59–60; STARKE, *supra* note 55, at 122–29. *But see* BROWN, *supra* note 55, at 35–36 (1970) (making an express connection between diplomatic relations and equality).

relationship and mutual respect on each other's territory and sovereignty.

Zhou noted that, although it seems unreasonable to make diplomatic relationships conditional, these conditions were necessary, reasonable and practical from the perspective of the PRC after liberation.³²³ This was because the PRC government would not tolerate a country that had established diplomatic relations with the PRC to stay in touch with the Kuomintang situated in Taiwan, which would give rise to the "Two Chinas" situation and which would need a process of negotiation in order to resolve it.³²⁴

Concerning half-diplomatic relationships, Zhou described this as when both parties stay at the stage of sending *chargé d'affaires* to each other.³²⁵ Zhou gave the example of the Sino-British relationship and Sino-Dutch relationship for a long while, which was abnormal.³²⁶ Almost as an aside, Zhou observed that unofficial diplomatic relations would be something akin to Sino-U.S. Ambassadorial Talks.³²⁷ Finally, citizen diplomacy included visits of individuals and civil groups, where these entities might be able to reach a certain consensus on particular matters and perhaps even make a joint declaration, which would be a type of creative diplomacy.³²⁸

10. Treaty Law

Chapter Ten started by introducing the three conditions for a treaty: (1) the full qualification of the contracting state; (2) voluntary consent; and (3) legality and possible purpose. Zhou accused imperialist states of breaching their treaty obligations, and in any event, unequal treaties entered into under duress would be void and unenforceable.

Concerning the three conditions for a treaty, Zhou elaborated on the full qualification of the contracting state when

323. See ZHOU, *supra* note 34, at 507.

324. See *id.*

325. See *id.* at 510-11.

326. See *id.*

327. See *id.* at 512.

328. See *id.* at 517.

he asserted that only a state can make a treaty.³²⁹ Zhou explained that Western jurists have categorized states into sovereign states and half-sovereign states, which undermined the rights of the latter group to make treaties.³³⁰ Zhou declared this as being incorrect because half-sovereign states are the result of colonialism during imperial expansion.³³¹ Nevertheless, half-sovereign states almost were non-existent at the time of Zhou's writing, and so he concluded that all states could make treaties at that time.³³² Zhou emphasized the states in a federal form of government—such as Switzerland—could make treaties in accordance with the constitution, but administrative regions and autonomous regions in a unitary state would have no right to make treaties.³³³ Zhou gave an example of the Simla Accord in 1914, which the Chinese government saw as void because the Tibet local government signed it.³³⁴ With regard to the other conditions for a treaty, Zhou asserted that treaties can be void for error, fraud and duress, and that the rights and duties confirmed by the treaty must be practical and legitimate.³³⁵

Zhou concluded with observations that imperialist states always break the principle of adhering to treaties.³³⁶ He gave an example of the United States breaking the Geneva Convention in 1954 regarding the Indo-China dispute when it invaded Vietnam,³³⁷ although he did not elaborate on the reasons for this. Nevertheless, Zhou believed that there needs to be sanctions against treaty breakers in order to preserve the enforceability of treaties.³³⁸ At the same time, he observed that the obligation to adhere to a treaty cannot be absolute because the nature and existence of some treaties are special, and it might be unreasonable or unjust to enforce particular treaties.³³⁹ Zhou

329. See ZHOU, *supra* note 34, at 603.

330. See *id.*

331. See *id.*

332. See *id.*

333. See *id.*

334. See *id.*

335. See ZHOU, *supra* note 34, at 604–05.

336. See *id.* at 650.

337. See *id.*

338. See *id.*

339. See *id.* at 651.

believed that such flexibility could be applied with the unequal treaties that were forced upon weak states by imperialist states, as well as treaties outdated due to changed circumstances.³⁴⁰

11. International Organizations

Chapter Eleven on international organizations strongly criticized the United States for manipulating the United Nations in order to obstruct the PRC from returning to the United Nations as the representative of China. This point was in line with PRC policies at that time.³⁴¹ In addition, Zhou pointed out how the United States manipulated the United Nations to initiate the Korean War and the military intervention in the Congo. The Chapter also briefly introduced some regional organizations, such as the Organization of American States, the League of Arab States and the Organization of African Unity, all of which was relatively descriptive in nature.

Zhou saw international organizations as both platforms for international cooperation as well as arena for international struggles.³⁴² In particular, he asserted that imperialists make use of their status in international organizations in order to interfere with the internal affairs and undermine the sovereignty of other states.³⁴³ Zhou believed this inevitably would result in opposition to an organization, such as U.S. manipulation of the United Nations in order to promote the “Two Chinas Scheme” that left the Chinese people with no choice but to fight against the United Nations.³⁴⁴

Zhou shifted his attention to the League of Nations, which had been founded in order to secure the fruits of victory of the imperialist states after the First World War and implement hostile policies against the Soviet Union.³⁴⁵ Zhou asserted that the League of Nations had its weaknesses from the day it was founded, including the constitutional exclusion of the Soviet

340. *See id.*

341. *See China Asks for Nothing, supra* note 24; *Fundamental Problem, supra* note 23; *Superstitious Beliefs, supra* note 20.

342. *See ZHOU, supra* note 34, at 687.

343. *See id.*

344. *See id.*

345. *See id.* at 689.

Union and the United States, which left it lacking representativeness.³⁴⁶ Interestingly, this assertion is not actually reflected in the Covenant of the League of Nations, so it is unclear why Zhou would make this assertion. In terms of its organization and procedure, Zhou explained that the power of the Council and the Assembly were unclear and that all the resolutions required unanimous decision, which reduced the organization's flexibility.³⁴⁷ Zhou clarified that, since the founding of the League, it had failed to perform its functions as an international organization, especially during the expansion of fascism in the 1930s, and it generally showed its incompetence in keeping world peace.³⁴⁸ As an example, Zhou pointed to when Japan invaded the northeast of China in 1931 and the League did not take action, apart from sending an investigation team to China, making a report and adopting a report that favored the Japanese invaders.³⁴⁹ Zhou also pointed to Fascist Italy's invasion of Abyssinia, when the League only passed an incomplete financial sanction, which resulted in Abyssinia being conquered by Fascist Italy.³⁵⁰ Even though the Soviet Union joined the League by 1934, the League failed to stop Nazi Germany's expansion within Europe, eventually leading to the dissolution of the League.³⁵¹

With regard to the United Nations, Zhou described how the Security Council holds the most political significance, which it uses to act against the UN's principles and purposes.³⁵² Zhou elaborated that it failed to keep world peace, and it even provided excuses for imperialist military invasions.³⁵³ For example, the United Nations passed a resolution in 1950 to establish a U.S.-led UN Command to start a war against Korea, with another example being the UN's military intervention into the Congo in 1960.³⁵⁴ Turning his attention to the UN Secretary General, he explained that, by nature, that position is only

346. *See id.* at 690–91.

347. *See id.*

348. *See ZHOU, supra* note 34, at 690–91.

349. *See id.*

350. *See id.*

351. *See id.* at 692.

352. *See id.* at 712.

353. *See id.*

354. *See ZHOU, supra* note 34, at 712.

responsible for the administrative affairs of the United Nations, although it also carries out some political missions.³⁵⁵ Zhou went on to say that manipulation by U.S. imperialism often leads the Secretary General to abuse power by interfering in other states' affairs.³⁵⁶ This point was in line with PRC policies at that time.³⁵⁷

Zhou then analyzed UN Charter Article 103 concerning UN Charter obligations prevailing over conflicting obligations, pointing out that the rule concerned different conflicts: one between member states' Charter and treaty obligations, and another between member states' and non-member-states' Charter and treaty obligations.³⁵⁸ Concerning the former situation, the Charter obligation must prevail. Article 103 also prevails in the second situation because a member state, being a party of a multi-states treaty, cannot change its obligations under the treaty unless other parties to the treaty agree.³⁵⁹ Concerning the latter situation, Zhou said it is problematic because the Charter has no effect on non-member states, although some Western jurists argue that the Charter is a basic law in international society and a social norm, so even non-member states have to give way to it.³⁶⁰ Zhou concluded that this argument exaggerates the effects of the Charter, rendering it unconvincing.³⁶¹

With regard to China's representation within the United Nations, Zhou explained that this has been a significant issue since the PRC's establishment.³⁶² Zhou concluded that this was a serious mistake inasmuch as China was a UN founding member and permanent member of the Security Council, all of which shows the importance of China in the United Nations.³⁶³ Here, Zhou seemed to be asserting that *China* meant the

355. *See id.* at 720.

356. *See id.*

357. *See An Ugly Drama*, *supra* note 25; *Look!*, *supra* note 21.

358. *See* ZHOU, *supra* note 34, at 720–21.

359. *See id.*

360. *See id.*

361. *See id.*

362. *See id.* at 725.

363. *See id.*

People's Republic of China, that China had been disrespected by its treatment within the United Nations, or both.

Zhou elaborated that Chinese people love peace, that China supported the Allies during the Second World War and that the establish of the Chinese Communist Party was by the peaceful will of the Chinese people.³⁶⁴ This point obviously was in line with PRC policies at that time,³⁶⁵ and it would emphasize the democratic or representative elements of the People's Republic of China. As an example of China's connection to the United Nations, Zhou pointed out how, in 1945, before the San Francisco Conference, Mao stated in an article:

The Chinese Communist Party (CCP) totally agrees with the suggestions made in the Dumbarton Oak Conference and the decision made in the Crimea Conference. The CCP welcomes the San Francisco Conference. The CCP has sent its representative to attend the San Francisco Conference to represent the will of the Chinese people.³⁶⁶

Zhou explained that on October 1, 1949, Mao declared “this government (the PRC government) is the only legitimate government that represents the PRC's people;” therefore, the representatives of the Republic of China government who attended the UN Conference were part of an exiled group that did not represent the Chinese people.³⁶⁷ The PRC requested the United Nations to disqualify the Republic of China representatives, with other states like the Soviet Union providing support for the PRC's legitimate rights and status in the United Nations.³⁶⁸ Zhou developed support for this point by pointing to the support that other states, especially from Asian and African states, have given the PRC within the United

364. See ZHOU, *supra* note 34, at 726.

365. See *Celebration of the Right of the People's Republic of China is Resumed* [祝贺恢复我国在联合国的合法权利], PEOPLE'S DAILY [人民日报], Oct. 31, 1971 [hereinafter *Celebration*].

366. See ZHOU, *supra* note 34, at 726.

367. See *id.* at 727.

368. See *id.*

Nations.³⁶⁹ Zhou concluded that the United Nations was fundamentally wrong in the way it dealt with China's representation within the United Nations.³⁷⁰ Not only did the United Nations violate the Charter, but it also ruined its reputation inasmuch as the PRC was the only legitimate government for China, and the United Nations excluded it due to manipulation and misinterpretation of the UN Charter by the United States.³⁷¹ In particular, Zhou asserted that reinstatement of the PRC's legitimate rights within the United Nations should be a procedural matter that did not require a two-thirds majority vote in accordance with Article 18 of the UN Charter.³⁷²

Just as the United States had manipulated the United Nations in order to promote its own interests, Zhou asserted that the United States manipulated the Organization of American States in the name of the Monroe Doctrine.³⁷³ He pointed to the declaration to oppose International Communism in 1954 and the decision to expel Cuba from the Pan-American Union in 1962 as examples.³⁷⁴ Zhou praised states such as Mexico that stood up to the United States.³⁷⁵ Zhou similarly praised the League of Arab States for standing up for Arab rights in Palestine and for pushing back against British and American imperialist efforts in Egypt and elsewhere.³⁷⁶ The Organization of African Unity likewise defended equality and the protection of African interests when supporting liberation of colonies, while at the same time helping resolve disputes between member states, such as the Algeria and Morocco border dispute and the Somalia and Ethiopia border dispute.³⁷⁷ This acted as a useful segue into the next chapter on the peaceful resolution of international disputes.

369. *See id.*

370. *See id.* at 747.

371. *See id.*

372. *See ZHOU, supra* note 34, at 747.

373. *See id.*

374. *See id.*

375. *See id.*

376. *See id.*

377. *See id.*

12. Peaceful Resolution of International Disputes

Chapter Twelve on the peaceful resolution of international disputes started with Zhou emphasizing the PRC's commitment to negotiated settlement of disputes, giving as examples the border dispute between China and Burma in 1960 and the border dispute between China and India on Tibet in 1954.³⁷⁸ This point was in line with PRC policies at that time.³⁷⁹ Zhou explained that, even with the U.S. government that had been hostile towards the PRC in the past, the PRC still was willing to negotiate with the United States to resolve the Taiwan issue, with China-U.S. Ambassadorial talks having taken place in Warsaw on that issue.³⁸⁰ This, too, was in line with PRC policies at that time.³⁸¹

On international arbitration, Zhou stated that the PRC prefers direct negotiation over international arbitration.³⁸² At that time, most of the PRC's foreign trade agreements did not include an arbitration clause.³⁸³ Moreover, the use of international arbitration with border disputes was seen as particularly unsuitable because border disputes relate to sovereignty and territorial integrity.³⁸⁴ Zhou pointed to the Sino-Indian Border Dispute as an example, where the Indian government insisted on handing the matter of interpretation of the Simla Accord through international arbitration, whereas the PRC preferred not to use international arbitration for such matters that involved PRC internal affairs and sovereignty issues.³⁸⁵

With regard to the International Court of Justice, Zhou asserted that the system of electing judges tilted the process in favor of Western imperialist states because they have double

378. See ZHOU, *supra* note 34, at 760.

379. See *Celebration*, *supra* note 365; *Guo Moruo Made a Speech Concerning the Achievement of Asian-African Conference* [中国人民保卫世界和平委员会主席郭沫若 中国人民保卫世界和平委员会主席郭沫若], PEOPLE'S DAILY [人民日报], May 8, 1955.

380. See ZHOU, *supra* note 34, at 760.

381. See *Authentic Friendly-Equal Diplomatic Relations*, *supra* note 141.

382. See ZHOU, *supra* note 34, at 776–77.

383. See *id.*

384. See *id.*

385. See *id.*

votes as members of the Security Council.³⁸⁶ In this context, Zhou alluded to there not being a difference between permanent members and temporary members when it comes to Security Council voting,³⁸⁷ but this ignores the veto powers of the permanent members.

On the effectiveness of the resolution of disputes by the United Nations, Zhou noted that, while the rules regarding dispute resolution in the UN Charter are obviously more comprehensive and democratic than the League of Nations Covenant, especially on the coherence between the aims and principles, the execution of these rules in practice is a complete failure.³⁸⁸ Zhou again criticized the United States for manipulating the United Nations and worsening international disputes in order to gain benefits for itself instead of actually resolving the disputes.³⁸⁹ Zhou portrayed the UN's solutions to disputes as unjust and impractical.³⁹⁰ As a result, some of these disputes turned into armed conflicts and even became excuses for imperialist states to intervene in other states' affairs or to take military actions.³⁹¹ For example, the discrimination in South Africa that was raised by India in 1946, the conflicts between Israel and Arab states since 1947 and the Kashmir conflict in 1948 all escalated in this matter.³⁹² For the Kashmir conflict, the United Nations, under the manipulation of imperialist states, allowed India to invade Kashmir and did not take the advice of the implementing referendum, which left the India-Pakistan conflicts unresolved.³⁹³

This Section has shown how Zhou's *International Law* engaged with the main topics and problems of international law at that time by providing views based on his observations that largely were unique from both PRC policies and Western perspectives of international law, although Zhou clearly was aware of both of these. Zhou limited the ideological statements

386. *See id.* at 783.

387. *See id.*

388. *See* ZHOU, *supra* note 34, at 784.

389. *See id.*

390. *See id.*

391. *See id.*

392. *See id.*

393. *See* ZHOU, *supra* note 34, at 784.

about international law, which appears to have been typical during that period within the Chinese international law epistemic community. Zhou even was criticized by his editors for his focus on Western bourgeois international law, as contained in the preface to the 1976 version. All of these factors suggest that Zhou's *International Law* had significant scholarly characteristics to it.

IV. Conclusion

As Edgar Allan Poe wrote, “The best place to hide is in plain sight.”³⁹⁴ As alluded to in the introduction of this Article, Hungdah Chiu asserted in 1987 that “no scholarly writings on international law were published in the People’s Republic of China” between 1965 and 1979.³⁹⁵ Numerous U.S.-based international law scholars have repeated this assertion. This Article has shown that there was at least one scholarly publication on international law from the PRC during this time period—Zhou Gengsheng’s book *International Law*. Therefore, one can say that Zhou’s *International Law* has been hiding in plain sight—hence the reference to “semisecret” in the title of this Article, along with the fact that Zhou is well known among PRC international law scholars. Indeed, Hungdah Chiu clearly knew about this publication inasmuch as he wrote a review of this work, as did two other Chinese commentators. However, there is limited evidence that Western scholars have read these reviews, given the lack of citations to these reviews, let alone to the original source. Future publications will be left to surmise why U.S.-based international law scholars ignored this source when repeating Hungdah Chiu’s 1987 assertion, assuming those scholars themselves do not respond to this Article. The introductory portion suggested that Hungdah Chiu may have ignored Zhou’s *International Law* because he saw a lack of scholarly value in this work because it was too similar to Oppenheim’s *International Law* and mirrored PRC policies towards international law at that time. This Article has shown

394. Edgar Allan Poe, *The Purloined Letter*, in ELEONORA, THE FALL OF THE HOUSE OF USHER & THE PURLOINED LETTER (1917).

395. Chiu, *supra* note 1, at 1127.

that Zhou's *International Law* was an entirely different book from Oppenheim's *International Law* and that it varied considerably from PRC policies towards international law on a number of important issues, including his views on the custom of premature recognition of an emerging state and allowance of intervention on humanitarian grounds, as well as support for the fight for independence of former colonies and issues of migration of people with a particular race or nationality. Moreover, this Article has shown that Zhou's perspective on international law actually was considerably progressive compared to Western literature from that time. Such progressiveness underlines the work's originality, although it must be noted that progressiveness is not a requirement for a work to be deemed scholarly. In short, any reasonable commentator in the 1980s with knowledge of Oppenheim's *International Law*, PRC policies towards international law between 1965 and 1979 and Western international law literature from that time period would have no choice but to recognize the scholarly characteristics of Zhou's *International Law*, if not classify it all as a scholarly piece of work.

It is interesting to speculate on why erstwhile commentators ignored Zhou's *International Law*. Commentator Gu Ming Dong employed the word *Sinologism* in 2013 to capture how Western and Chinese scholars alike often mischaracterize Chinese culture, not based on "obvious factors of misinformation, biases and prejudices or political interference," but rather on "epistemological and methodological underpinnings that has become a cultural unconscious."³⁹⁶ A surprising number of members of the international law epistemic community believe that the PRC was non-participatory or indifferent towards international law during the Mao era,³⁹⁷ not just the late-Mao era and not just among PRC

396. MING D. GU, SINOLOGISM: AN ALTERNATIVE TO ORIENTALISM AND POSTCOLONIALISM 1–2 (2012).

397. See, e.g., *Syllabus of* Thomas E. Kellogg & Anthea Roberts, *China and International Law*, (Spring 2015) (on file with the author) (asserting that China had an "ambivalent attitude towards many key aspects of international law and the architecture of global order" during the Mao era); JEROME COHEN & HUNGDAH CHIU, PEOPLE'S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY 14–22 (1974) (when discussing the post-1949 PRC approach to international law, they only talked about either domestic law or foreign policy,

international law scholars. This assertion has been made notwithstanding the overwhelming evidence to the contrary that the PRC actively has upheld the state-centered interpretation of the international legal order, which focuses on state sovereignty and non-intervention, *inter alia*. To be more specific, the PRC appears to have employed a hybrid Marxist-Hobbesian-Kantian approach to international law during the Mao era,³⁹⁸ an approach that future publications will explore further. Suffice it to say that such an approach is far from being non-participatory or indifferent towards international law, just that the PRC did not blindly fall in line with Western notions of international law, which tend to include democratic and liberal

not about international law per se); ANN KENT, BEYOND COMPLIANCE: CHINA, INTERNATIONAL ORGANIZATIONS, AND GLOBAL SECURITY 62–64 (2007) (“China initially showed little interest in, or respect for, the norms, principles, and even rules of the international organizations it joined. It was only after 1978 . . . that it began to reassess its interests in the light of organizational norms, to acknowledge, if only in practice, the negotiability of its sovereignty, and to accept the costs as well as the advantages of organizational participation. Most important, it was only after 1978 that China learnt the importance of reciprocal compliance as a foundation of international trust and cooperation.”).

398. See, e.g., FU CHU, RUSK’S ‘INTERNATIONAL LAW’ CANNOT CONCEAL THE CRIME OF AGGRESSION AGAINST VIETNAM BY AMERICAN IMPERIALISM, IN PEOPLE’S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY LOC.1487 (Jerome A. Cohen & Hungdah Chiu eds., 1974) (ebook) (building up the PRC’s role as defender of international law in 1965); Shih Sung et al., *An Initial Investigation Into the Old-Law Viewpoint in the Teaching of International Law*, in PEOPLE’S CHINA AND INTERNATIONAL LAW: A DOCUMENTARY STUDY 31–32 (Jerome A. Cohen & Hungdah Chiu eds. 1974) (focusing on international law and class struggle); Qiao Guanhua, *The Speech of Qiao Guanhua: The Permanent Representative of the People’s Republic of China to the UN General Assembly* [中华人民共和国代表团团长乔冠华在联合国大会上的发言], 13 RED FLAG [红旗] 39 (1971) (calling for international peace by states working together to promote sovereignty and independence); Lü Shilun, *The Natural Law in Service of Imperialism* [为帝国主义服务的自然法学], PEOPLE’S DAILY [人民日报 (理论版)], June 29, 1963, at 62–64 (rejecting natural-law approach to international law as an imperialist tool); Yang Xin & Chen Jian, *Exposing and Criticizing the Fallacious Reasoning of Imperialists on Questions Concerning National Sovereignty* [揭露和批判帝国主义者关于国家主权问题的谬论], 4 STUDS. POL. & L. [政法研究] 6, 6, 15–16, 19–20 (1964) (focusing on limitless sovereignty); Zhou Ziya, *Talks on the Question of the Suez Canal* [谈苏伊士运河问题], 3 LEGAL STUDS. [法学] 35, 35–37 (1956) (justifying Egypt’s taking of the Suez Canal in terms of international law); see also Speech, Xue Hanqin, Speaker *International Law in a Pluralistic World* [多元世界里的国际法], Statement on reception of Doctor of Law (*Honoris Causa*) (Dec. 17, 2014), www.um.edu.mo (last visited Mar. 23, 2019) (alluding to all three of these approaches in the context of the PRC’s approach to international law).

values.³⁹⁹ Regardless, like the U.S.-based commentators who repeated Chiu's assertion that the PRC produced no international law scholarship in the late Mao era, these members of the international law epistemic community have no obvious biases or reasons to provide inaccurate views about the PRC's approach to international law during the Mao era. On the contrary, given their ongoing academic interests in the People's Republic of China, they have an obvious incentive to provide views that are consistent with PRC policies, assuming they want continued access to the PRC for their research purposes.⁴⁰⁰ Therefore, it seems easy to chalk these inaccurate views up to the underlying "cultural unconscious," as opposed to "misinformation, biases and prejudices or political interference,"⁴⁰¹ as Gu Ming Dong explained. Although pure speculation, it is possible that Hungdah Chiu's downplaying of PRC international law scholarship during the late Mao era in general and the importance of Zhou's *International Law* in particular did not reflect a conscious bias against the PRC and PRC scholarship, although it certainly was a possibility that he harbored some biases.⁴⁰² After all, Chiu was born in Taiwan,

399. For a discussion regarding some Western commentators' somewhat biased views of international law, see generally James D. Fry, *Pluralism, Religion and the Moral Fairness of International Law*, 4 OXFORD J. L. & RELIG. 393 (2014) (exploring Thomas Franck's approach to understanding the moral fairness of international law).

400. See, e.g., Carsten A. Holz, *Have China Scholars All Been Bought?*, FAR E. ECON. REV., Apr. 2007, at 36, <http://ihome.ust.hk/~socholz/HaveChinaScholarsAllBeenBought-FEER30April07.pdf> (last visited June 14, 2019). To be clear, this obviously is not to say that these commentators or other commentators have been explicitly or implicitly bought or inappropriately influenced.

401. GU, *supra* note 396, at 1–2.

402. Indeed, Chiu occasionally presented specious characterizations of Mao-era international law scholarship. For example, Chiu wrote in 1989: "During the Maoist era, not a single article devoted entirely to human rights was published in China." Hungdah Chiu, *Chinese Attitude Toward International Law of Human Rights in the Post-Mao Era*, 5 OCCASIONAL PAPERS/PREPRINT SERIES CONTEMP. ASIAN STUDS. UNIV. MD. SCH. L., 1, 3 (1989). However, he failed to explain what was so important about having an article "devoted entirely" to human rights when broader works addressed human rights, such as Zhou Gengsheng's handling of human rights in his 1963 article, Keng-Sheng, *supra* note 28, at 54–62 (providing the English translation), not to mention the reference to human rights in chapter 7 of Zhou's *International Law*, as explained above. Indeed, Soviet international law scholars never devoted an entire article to human rights *stricto sensu*, and yet that has not

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taught there and served as Minister of State for Taiwan's Executive Yuan (cabinet) for a year,⁴⁰³ and it is no mystery that the PRC and Taiwan have suffered from bad relations since the Chinese Civil War.⁴⁰⁴ Nevertheless, Chiu's downplaying could have derived from his perception of the differences of the PRC approach compared to the Western approach at that time, as well as a mistaken belief that the Western approach was the only valid approach. As Chiu wrote in 1972:

The Communist Chinese concept of unequal treaties is flexible and broad. The Communist Chinese consider this concept an important rule of the law of treaties. According to their view, an unequal treaty is invalid in international law. Such a concept of unequal treaties does not seem to have any support in the writings of Western international law scholars.⁴⁰⁵

This quote shows how Chiu dismissed the PRC's approach simply because it differed from the Western approach, even though the mainstream allowed for divergence in the form of regional and national approaches through dualism and

stopped scholars from recognizing and taking seriously the Soviet approach to human rights. See, e.g., Rein A. Müllerson, *The International Protection of Human Rights and the Domestic Jurisdiction of States*, in PERESTROIKA AND INTERNATIONAL LAW: CURRENT ANGLO-SOVIET APPROACHES TO INTERNATIONAL LAW 62 (Anthony Carty & Gennady M. Danilenko eds. 1990).

403. See Ma Ying-Jeou, *Tribute in Memory of Dr. Hungdah Chiu*, 27 MD. J. INT'L L. 1 (2012); Dongsheng Zang, *China's "Attitude" Toward Human Rights: Reading Hungdah Chiu in the Era of the Iraq War*, 27 MD. J. INT'L L. 263, 267–68 (2012) (describing Hungdah Chiu's life); *In Memoriam: Professor Hungdah Chiu (1936-2011)*, DIGITAL COMMONS @ UM CAREY LAW, https://digitalcommons.law.umaryland.edu/chiu/?utm_source=digitalcommons.law.umaryland.edu%2Fchiu%2F3&utm_medium=PDF&utm_campaign=PDFCoverPages (last visited June 4, 2019).

404. See generally STEVEN M. GOLDSTEIN, *CHINA AND TAIWAN* (2015); RICHARD C. BUSH, *UNCHARTED STRAIT, THE FUTURE OF CHINA-TAIWAN RELATIONS* (2013). Future researchers might want to explore the possible biases inherent in Chiu's opinions, in particular whether they reflect official Taiwanese positions. The differences and animosities between the PRC and Taiwan already have been well identified and analyzed elsewhere. Future research might show that these political complexities between the PRC and Taiwan were the main reason why Chiu downplayed or ignored Zhou's book.

405. Chiu, *supra* note 80, at 239, 267.

autopoiesis.⁴⁰⁶ Clearly Chiu adopted a more liberal approach to international law than that of the PRC at this time.⁴⁰⁷ However, that is no basis to entirely dismiss the PRC's international law scholarship from the late Mao era, which was then and continues to be state centered in nature.⁴⁰⁸ After all, such an approach to international law was then and continues to be the dominant approach in general.⁴⁰⁹

The comparisons throughout this Article between Oppenheim's *International Law* and Zhou's *International Law* show that Zhou at least noticed Western descriptions of international law and tried to respond to them. The Western literature does not appear to have engaged with the PRC literature in the same way, almost as if Western scholars felt

406. See generally GREIG, *supra* note 79, at 52–53; Leo Gross, *Autointerpretation In International Law*, in 1 ESSAYS ON INTERNATIONAL LAW AND ORGANIZATION 383–86 (1984); TIMOTHY HILLIER, PUBLIC INTERNATIONAL LAW 18 (1994); PETER MALANCZUK, AKEHURST'S MODERN INTRODUCTION TO INTERNATIONAL LAW 63 (7th ed, 1997). For an interesting overview of the different approaches to international law, see Martti Koskenniemi, *A History of International Law Histories*, in THE OXFORD HANDBOOK OF THE HISTORY OF INTERNATIONAL LAW 943 (Barbo Fassbinder & Anne Peters eds., 2012).

407. See, e.g., Chiu, *supra* note 402, at 1, 39 (“Post-Mao China’s attitude toward international law appears to be a relatively positive one. Never, since the Communists came to power in China, has China shown such an interest in international law. This changing attitude is the result of the new political and economic policy of the post-Mao Chinese leaders, who are more interested in modernization than world revolution. To achieve the goal of modernization, the introduction of Western technology and investment into China is indispensable. International law serves as a useful tool to facilitate such intercourse between China and the outside world. This truth also explains the reason why China’s interest in international law has now gone beyond the traditional scope of international law and includes international economic law and related fields.”).

408. See, e.g., XUE HANQIN, CHINESE CONTEMPORARY PERSPECTIVES ON INTERNATIONAL LAW: HISTORY, CULTURE AND INTERNATIONAL LAW 68 (2012); Tieya, *supra* note 18, at 356; Xue Hanqin, *International Law in a Pluralistic World* [Duoyuan shijie li de guojifa], Speech Given at the University of Macao, Dec. 17, 2014, www.wells.org.cn/Article/ShowDetail/1378 (last visited June 14, 2019).

409. See HANS MORGENTHAU, THE POLITICS AMONG NATIONS 40 (1948); MALCOLM N. SHAW, INTERNATIONAL LAW 1 (3d ed. 1991); A. Claire Cutler, *Critical Reflections on the Westphalian Assumptions of International Law and Organization: A Crisis of Legitimacy*, 27 REV. INT’L STUD. 133, 133–36 (2001); David Kennedy, *International Law and the Nineteenth Century: History of an Illusion*, 17 QUINNIPIAC L. REV. 99, 110 (1997); Mark W. Janis, *Individuals as Subjects of International Law*, 17 CORNELL INT’L L.J. 61 (1984).

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that the PRC had nothing to contribute to the discourse. Jerome Cohen astutely recognized this situation in 1972, justifying Western scholars' neglect of PRC's positions on public international law due to their "sweeping, ideological nature" from the "crude generalizations [often being] based upon allegations made by the executive or legislative branches of the United States government, which continued to support the PRC's Nationalist rival in the Chinese civil war" and supported by materials from Nationalist China.⁴¹⁰ There certainly were many international law pieces by PRC commentators that contained such ideological generalizations. However, as this Article has shown, it would be a mistake to dismiss all PRC international law literature from this time period on this basis.

410. Jerome A. Cohen, *Introduction*, in CHINA'S PRACTICE OF INTERNATIONAL LAW: SOME CASE STUDIES 1, 1–2 (Jerome A. Cohen ed. 1972) ("[I]t is surprising that there have thus far been so few studies of the twenty-year record of the People's Republic (PRC) in international law"); *see also* Jerome A. Cohen, *Chinese Attitudes Toward International Law—and Our Own*, in CONTEMPORARY CHINESE LAW: RESEARCH PROBLEMS AND PERSPECTIVES 282, 291 (Jerome A. Cohen ed. 1970) ("Plainly, if the process of integrating China into the family of nations is ever to be completed, students of international law will have to empathize rather than moralize, and give the PRC's words and deeds a fair hearing. It is not enough merely to quote Chinese Communist statements, such as those asserting that the United States and the Soviet Union dominate the United Nations, or that the United States has no intention of disarming, as though these assertions carry their own refutation; we should inquire in each instance to what extent there is evidence to support the Chinese belief."). Cohen seems to have been the only Western international law scholar to have publicly recognized the possibility that there might be more to the PRC's approach to international law during its early days. His apolitical open-mindedness on these issues is to be commended.